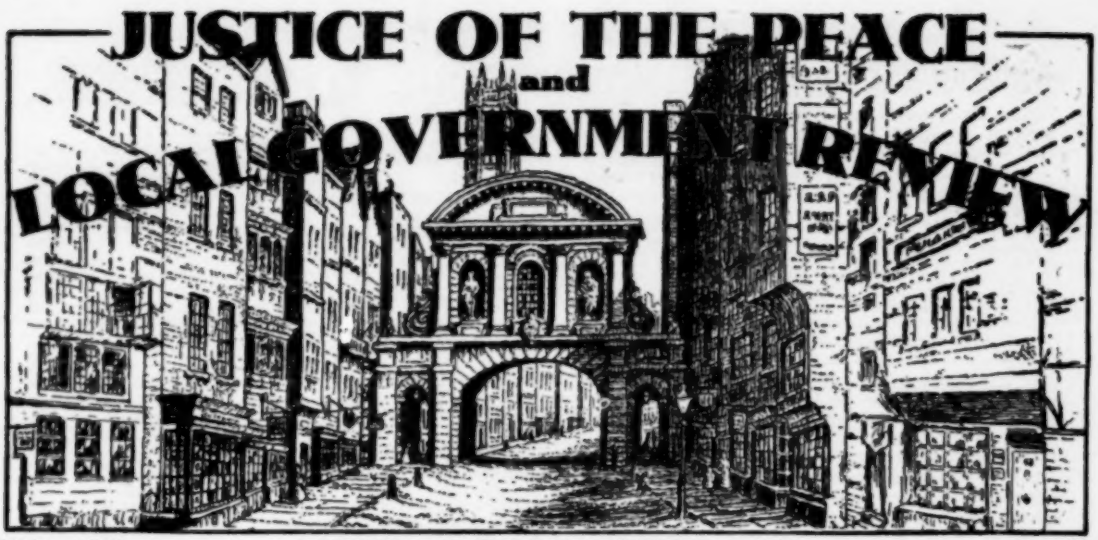

VOL. CXV. LONDON: SATURDAY, AUGUST 4, 1951. No. 31

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LEGACIES
FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. **Training of future Church Army Officers and Sisters.**
2. **Support of Church Army Officers and Sisters in poorest parishes.**
3. **Distressed Gentlewomen's Work.**
4. **Clergy Rest Houses.**

Preliminary enquiries will gladly answered by the

Financial Organising Secretary
THE CHURCH ARMY
55, Bryanston Street, London, W.1

A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

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RSPCA

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ROYAL SAILORS RESTS
PORTSMOUTH (1881) DEVONPORT (1876)
GOSPORT (1942)
Trustee in Charge:
Mrs. Bernard Currey, M.B.E.

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructional purposes.

Legacies are a most welcome help

Not subject to Nationalisation.

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BEDFORDSHIRE COUNTY COUNCIL

APPLICATIONS are invited from suitably qualified persons for the office of Clerk of the Council.

The conditions of the appointment will be those recently adopted by the County Council's Association for County Clerks. The salary will be fixed within the limits of the scales therein set out ; the actual scale to be settled according to the experience of the successful applicant.

It may be assumed that the successful applicant will be eligible for appointment to the office of Clerk of the Peace at a salary of £500 per annum, and if so appointed, may be required to accept the Honorary Clerkship to the Advisory Committee for the County ; and, subject to the permission of the County Council, may be appointed Honorary Clerk to the Lieutenancy.

The person appointed will be debarred from appointment as Clerk to the Valuation Panel, Under Sheriff or Civil Defence Controller and from holding any office or appointment not usually held by the occupant of the combined offices of the Clerk of the Peace and of a County Council.

The mileage allowance for the use of a private motor car whilst engaged on official duties will be that applicable to the Chief Officers of the County ; and other approved out-of-pocket expenses will be paid by the council.

Applications, with names of two referees, endorsed "Clerkship" to be forwarded to the Deputy Clerk of the Council not later than August 31, 1951.

COUNTY OF BUCKINGHAM

Petty Sessional Division of Aylesbury

Appointment of Assistant to the Clerk to the Justices

APPLICATIONS are invited for the appointment of a whole-time Male Assistant to the Clerk to the Justices.

Applicants should have considerable general magisterial experience, be competent typists, be capable of taking a court, issuing processes, taking depositions and keeping the Justices' Clerk's accounts.

The salary, based on A.P.T. Grade V, will commence at £570 per annum rising by annual increments, subject to satisfactory service, to £620 per annum. The appointment will be terminable by three months' notice on either side.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, should be sent to the Clerk to the Justices, 16 Bourbon Street, Aylesbury, Bucks, by Saturday, August 25, 1951.

J. O. JONES,
Clerk to the Justices.

16 Bourbon Street,
Aylesbury,
Bucks.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited from persons who have had experience and training as Probation Officers for the appointment of a full-time male officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers.

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. The successful applicant will be required to provide a motor car for which an allowance will be paid in accordance with the county scale for the time being in force.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than August 16, 1951.

Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk of the Probation Committee.

The Castle,
Winchester.

COUNTY OF DERBY

Appointment of Whole-time Woman Probation Officer

APPLICATIONS are invited for appointment of a whole-time Woman Probation Officer to serve the Chesterfield Borough and the Alfreton Petty Sessional Divisions of the Derbyshire Combined Probation Area.

The appointment and salary will be subject to the Probation Rules, 1949-50. The officer appointed will be required to provide a motor car (for which an allowance will be paid), and to undergo a medical examination.

Forms of application may be obtained from the undersigned and should be completed to reach me not later than August 18, 1951.

D. G. GILMAN,
Clerk to the Derbyshire Combined Area Probation Committee.

County Offices, Derby.

BOROUGH OF BARRY

Population	..	40,979
Rateable Value	..	£245,061
Area	..	4,265 acres

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with considerable Local Government experience for the appointment of Deputy Town Clerk, at a salary in accordance with Grade X of the National Scheme of Conditions of Service.

Applicants must be under 45 years of age.

The appointment is subject to the National Scheme of Conditions of Service ; to the Local Government Superannuation Act, 1937 ; to a medical examination, and to termination by three months' notice in writing at any time on either side.

Housing accommodation will be made available by the Corporation if required.

Applications, on forms obtainable from the undersigned, must be delivered to me not later than August 31, 1951.

Canvassing will disqualify, and applicants must disclose any known relationship to any member or senior officer of the Council.

T. D. HOWELLS,
Town Clerk.

Town Hall, Barry,

COUNTY BOROUGH OF SOUTHAMPTON

Appointment of Male Probation Officer

APPLICATIONS are invited for the above whole-time appointment.

Applicants should be between the ages of 23 and 40, except in the case of a whole-time serving Officer.

The appointment will be subject to the Probation Rules, 1949, and 1950, and the salary will be in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of not more than three recent testimonials, should be received by the undersigned not later than Saturday, September, 1, 1951.

ARTHUR J. ROGERS,
Clerk to the Justices.

Magistrates' Clerk's Office,
Law Courts,
Southampton.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXV. No. 31.
Pages 479-494

LONDON : SATURDAY, AUGUST 4, 1951

Offices : LITTLE LONDON, CHICHESTER, SUSSEX.

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NOTES of the WEEK

Authority to Prosecute

At p. 383, *ante*, we referred to the necessity for strict compliance with essential formalities in summary proceedings. In the particular instance quoted the question was one of authority to prosecute.

We are indebted to the learned town clerk of Wolverhampton for particulars of a case of some importance which recently came before the learned stipendiary magistrate for South Staffordshire, upon a prosecution under the Prepacked Food (Weights and Measures Marking) Order, 1950, in respect of possession for sale by retail of prepacked strawberries. It was alleged that the net weight was less than that printed on the wrapper.

A preliminary objection was taken by counsel on behalf of one of the defendants, as to the authority of the town clerk to prosecute. The summonses were in fact taken out in his name.

After legal arguments had been heard, the learned stipendiary dismissed the informations. He summarized his reasons as follows :

" (1) The Town Clerk never had any valid authority to institute proceedings. The order under which the proceedings were taken had not been delegated to the Markets' Committee and it is provided that proceedings can only be taken under the order by one of four entities namely, a constable or the Director of Public Prosecutions or the Board of Trade or the Mayor, Aldermen, and Burgesses of the Borough of Wolverhampton acting by the Council. The Markets' Committee could not delegate to the Town Clerk the power to proceed and the Town Clerk was not himself one of the entities permitted to take proceedings. (2) Certain resolutions of the Council in 1935 and 1939 referred only to antecedent matters and could not be interpreted as applying to delegations or references subsequently. These resolutions were made by the Council under s. 277 of the Local Government Act, 1933, and gave authority for the Town Clerk to take proceedings in all matters which ' have ' been delegated or referred to the Committees of the Council. (3) The resolution of 1935 (the resolution under s. 277 of the 1933 Act) purporting to authorize the Town Clerk to institute proceedings was *ultra vires* in that it purported to authorize the Town Clerk to proceed without limiting his authority by the addition of the words ' for and on behalf of ' the Local Authority."

So far as we are aware, there has been no application for a case to be stated for the opinion of the High Court.

Special Reasons

One more decision has been given by the High Court on the meaning of " special reasons " or " special circumstances of the case." This time the matter arose in a case brought under s. 7 (4) of the Road Traffic Act, 1930, for driving while disqualified. The subsection enacts that the offender is to be " liable on summary conviction to imprisonment for a term not exceeding six months or if the court think that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence, to a fine not exceeding £50 . . ."

The summary court before which the offender was tried sentenced him to a month's imprisonment. He appealed to quarter sessions and that court quashed this sentence and imposed a fine, expressing the opinion that that would be an adequate punishment. The police appealed, by Case Stated, and the High Court was asked to say whether in the circumstances quarter sessions were justified in substituting a fine for the sentence of imprisonment.

Lord Goddard, giving judgment, referred to the case of *Whittall* v. *Kirby* [1946] 2 All E.R. 552. *Prima facie*, the punishment under s. 7 (4) is to be imprisonment, and he thought that there was no difference in substance in the expressions used in ss. 11, 15 and 35 as to special reasons and that in s. 7 (4) as to " special circumstances of the case." If anything, this latter expression emphasized that the circumstances must be special to the case, and not to the offender. Matters which might be pleaded in mitigation because of the defendant's good character, or because of the hardship which would be caused were irrelevant and ought not to be taken into consideration. Parliament has said, in s. 7 (4), that *prima facie* the penalty for driving while disqualified is to be imprisonment, and it is the duty of a court to impose that sentence unless the special circumstances of the case justify a lighter sentence being imposed.

In the case in question his Lordship said that, in his opinion, there were no circumstances in the case which could be regarded as special circumstances and the sentence passed by the justices must be restored. The case is *Lines* v. *Hersom* reported in *The Times* of July 19, 1951, *see* p. 488 *post*. The report contains no details of the circumstances which led quarter sessions to think that a fine was an adequate punishment for the offence, but the importance of the case is, of course, that it lays down that the matter is to be dealt with on principles similar to those which govern special reasons under the other sections above mentioned.

Poor Prisoners' Defence

In the past there has been some criticism, not without reason, as to the failure of some benches to make use of the provisions of the Poor Prisoners' Defence Act, 1930. The passing of the Legal Aid and Advice Act, 1949, seems to have brought the whole subject of free legal aid into prominence, and even to

have stimulated justices to grant legal aid and defence certificates under the Act of 1930 more freely.

There has been some criticism about the too free use of the new machinery in civil cases, and now we have an example of such criticism about the use of the existing powers in criminal cases.

Dealing with a young man at assizes on a charge of shop-breaking to which he had pleaded guilty, Mr. Justice Stable expressed surprise that the man had been granted free legal aid, in view of the fact that he was said to be earning £16 a week. It was, the learned judge is reported as saying, a case in which there was no pressure of want or hunger, no domestic emergency, but just a case of plain thieving, and he passed sentence of eighteen months.

On the face of it, it does seem strange that a man who had been earning such high wages should have been thought to be in need of help from public funds for the purpose of legal representation. As apparently he had admitted his offence and was going to plead guilty at his trial, the necessity of legal aid seems less likely. We do not suggest that a man who pleads guilty is ineligible for the grant of a defence certificate, but we do think that fact might well be a reason for hesitating and for making close inquiry before acceding to any application.

Misconduct at Attendance Centre

Now that several attendance centres are in use, certain questions may arise as to the procedure in the case of a person who, having been ordered to attend, either fails without reasonable excuse to do so, or is guilty of a serious breach of the rules.

It is clear from s. 19 (7) that a summons or a warrant can be issued by any justice acting for the same petty sessional division as the court which made the order, whether that court was a juvenile court or an adult court. As attendance centres receive offenders of twelve years of age and under twenty-one, some of the orders will be made by a juvenile court. If it becomes necessary to issue process under s. 19 (7) the offender will no doubt, normally appear again before the court which made the order, but there is the case of an offender who was under seventeen when the order was made by a juvenile court and has become seventeen by the time he is to appear again for failure to attend or for misconduct. It might be thought desirable that he should again appear before the juvenile court, which would already know a good deal about him, but it is doubtful if this is correct. A juvenile court derives its jurisdiction from statutory authority, and is not, it is submitted, entitled to act without such specific authority. If the defendant is now seventeen years of age we think he should be dealt with by an adult court.

Another point to be noted is that upon proof of the failure to attend or the breach of rules, the court may revoke the attendance order, and deal with the offender, not as if he had just been convicted, but in any manner in which the court could have dealt with him if it had not made the attendance order. This seems to mean that, for instance, an offender who was under seventeen when the order was made and who has attained that age when again before the court, can be sent to an approved school, but could not be sent to prison in any circumstances.

This appears to us to be the correct interpretation of s. 19 (7 and 8), which is so worded as to indicate that the possibility of a fresh court having to deal with the offender was contemplated.

Corrective Training

In the Court of Criminal Appeal on July 16, certain principles which should guide courts in deciding whether or not to impose a sentence of corrective training were again stated. These principles, it would appear, apply also to the passing of a sentence of borstal training.

Under s. 21 (4) of the Criminal Justice Act, 1948, the court is required, before passing a sentence of corrective training, to consider any report or representations by the Prison Commissioners, and there is a similar requirement in s. 20 (7) in respect of borstal cases.

In *R.* v. *Tarbotton* [1942] 1 All E.R. 198, it was held that it was inadvisable to pass a sentence of borstal training if the prison commissioners reported that the offender was unsuitable for such training. It was also made clear in *R.* v. *Apicella* [1949] 2 All E.R. 813 that where the prison commissioners report that a man is suitable for corrective training, and the court is satisfied that the statutory conditions rendering him liable to such a sentence are satisfied, the court has a discretion and is not bound to pass such a sentence.

In the recent case, the Lord Chief Justice said that where the prison commissioners reported that a man was not fit for corrective training, the courts should not pass such a sentence. Those reports were given where a man was physically unfit or where, as in the present case, such training was thought to be of little use in the light of his earlier criminal history.

Conversely, where the Commissioners reported a man to be fit for corrective training, it did not necessarily follow that there was any need for such sentence to be passed.

Probation and Juvenile Court Work in Salford

We have received the reports for 1950 of the probation committee and of the juvenile court panel in Salford. The "housing" problem is giving the probation committee some trouble because they have had to give up quite satisfactory offices which they had for the probation staff, have had to accept, for the time being, some quite unsatisfactory alternative accommodation and have failed to secure Home Office approval for a scheme to adapt certain other premises for their use. New cases placed on probation in 1950 by Salford courts numbered 196, compared with 161 in 1949, and of these 196, eighteen were placed under the supervision of other courts. In addition, sixty-two cases, compared with forty-five in 1949, were received for supervision from courts outside Salford. The Salford probation officers, eight in number, received, therefore, 240 fresh cases.

During the year, 212 probationers completed their period of supervision, 160 being recorded as satisfactory and fifty-two as unsatisfactory. It is noted that of the fifty-two, eighteen were sent to approved schools, five to borstal, eight to prison and one to corrective training. In six of the cases the probation period was extended.

Three hundred and nineteen people remained under the care of probation officers at the close of 1950. During the year only eight persons were required to reside in approved homes or hostels. In 1949 the number was five.

The report shows the usual volume of matrimonial work with which the modern probation officer is called upon to deal. The total number for 1950 was 214 and it is claimed that reconciliation was effected in ninety-three of these. The corresponding figures for 1949 and 1948 were 177 and fifty-nine; and 145 and sixty-five.

The juvenile court panel's report records a small but definite rise in the figures for indictable offences and for care or protection cases. Comment is made on the limited powers of the juvenile courts, particularly so far as punishment is concerned. It is considered that detention in remand homes is not effective because they are not equipped for dealing separately with the small proportion of juveniles who are sent to them as a punish-

ment. The idea is put forward for consideration (it is not, of course, a new one), that since every effort is made to deal with juvenile offenders while keeping them in their own homes it ought to be possible to combine some form of punishment with probation, the object of the latter being to follow up the punishment by constructive work to prevent further offences. Probation alone, for an undisciplined and wilful child, may seem too pleasant to induce in him any feeling that the act which brought him before the court is in any way a serious matter. If he could be punished in some way to bring home to him that he has done something wrong, and then could be helped subsequently by a probation officer's guidance more beneficial results might follow. Such is the argument, and it is not unattractive, but it involves inevitably, if probation is to have any sanction behind it, the possibility either of punishing twice or punishing in two halves, as it were, for the one offence. It must be admitted, however, that present methods do not seem to be solving the problem of dealing with juvenile delinquents, and others may have to be tried.

Justices of the Peace Act, 1949

An Order in Council made on June 29, and entitled the Justices of the Peace Act, 1949 (Commencement No. 2) Order, 1951 (S.I. 1182 (C.3)), fixes the dates for the coming into operation of certain sections of the Act as under :

FIRST SCHEDULE

PROVISIONS COMING INTO FORCE ON 1ST OCTOBER, 1951

Provisions of the Act	*Subject matter of provisions*
Section 10	Area of commission.
Subsection (1) of s. 11	Saving for City of London.
Section 38	Place for holding county quarter sessions.
Section 42	Compensation for loss of office.
Second schedule	Provisions consequential on changes in commission of the peace.
Third schedule	Non-county boroughs retaining commissions of the peace.
In sch. 6, paras. 1 to 3	Consequential provisions as to local Act stipendiaries.
So much of Part III of sch. 7 as is set out in the appendix hereto.	Repeals.

SECOND SCHEDULE

PROVISIONS COMING INTO FORCE ON 1ST JANUARY, 1952

Provisions of the Act	*Subject matter of provisions*
Section 12	Licensing authorities for non-county boroughs.
So much of Part III of sch. 7 as is set out in the appendix hereto.	Repeals.

The third schedule to the order sets out in detail the transition and supplemental provisions having effect in connexion with provisions of the Act brought into force on October 1, 1951.

Deceiving the Court

A recent case before the High Court in which a firm of bookmakers made an application for a writ of attachment or committal for alleged contempt of court against a man and his solicitor raised issues of general importance to courts and to the legal profession. The basis of the allegation was that in an attempt to recover what was in fact simply an ordinary betting debt the solicitor concerned endorsed the writ in question in a way designed to conceal from the court before which the action was brought the true nature of the debt. It was stated in the course of the proceedings that on many previous occasions resort had been had to a similar form of endorsement and the Lord Chief Justice said that it was time that the practice was stopped in no uncertain manner.

The issue in the case in question was not one with which justices will ever be concerned and the conduct of court proceedings before the High Court and county courts is entirely different from the procedure before courts of summary jurisdiction. There is, however, this much in common. Litigants sometimes think (and unfortunately some members of the legal profession may occasionally give them cause for so thinking) that proceedings before a court of law are a battle of wits in which one is entitled to try to score a success against one's opponent in any way possible. The true position is, of course, that the court is there to hear all the available evidence and relevant argument and to give, to the best of its ability, a just decision on the facts and on the law. Advocates should not lend themselves to any attempt to deceive the court either as to the law or as to the facts. As the Lord Chief Justice said, it is to be hoped that counsel and solicitors will bear in mind that they owe a duty to the court as well as to their clients. He pointed out that the principal object of requiring the signature of counsel or a solicitor to pleadings settled by them was to prevent issues, whether called feigned or fictitious, from being put before the court. The principle applies equally to proceedings before courts of summary jurisdiction who ought to be able to rely upon advocates appearing before them not to resort to any practice which may tend to mislead the court, and the fact that it might advantage their client so to do is no justification. We do not suggest, of course, that such things happen with any frequency, but one does hear from time to time of incidents which make one wish that all members of the legal profession would observe, in their conduct of proceedings, those high standards which are set and maintained by the great majority.

Decay in All Around

A memorandum recently published by the Royal Institution of Chartered Surveyors entitled " Rent Restrictions and the Repair Problem " will no doubt be considered by the Government ; it ought to be considered equally by local authorities and their advisers. We do not know of any reliable statistics showing the extent of present disrepair of privately owned houses, and indicating how houses which need repairs should be allocated, between those which are and those which are not subject to the Rent Restrictions Acts. It is, however, well known to every local authority that there are serious arrears of repair ; still more, perhaps, of ordinary standards of maintenance, still to be overtaken. It would not be right to blame the Rent Restrictions Acts entirely ; the necessity for obtaining civil building licenses has played its malign part, and it is unfortunately true that there has been a good deal of discrepancy among local authorities in the way they handled the applications for those licences which lay in their power to grant, or upon which they were consulted by the Ministry of Works. We have come across cases where a local authority's sanitary inspector had urged that work be done, but the committee responsible for civil building licences had refused to issue them. We have particulars of an authenticated case, where a local authority held up a civil building licence (for the repair of a dwelling-house damaged by blast) throughout the greater part of a hard winter, in which snow and rain were driving through broken walls into a bedroom occupied by two

children. When all is said and done it is, however, a matter of notoriety that the impossibility of obtaining a return comparable to that obtained from other forms of investment, coupled with the increased cost of repairs, which the Royal Institution of Chartered Surveyors puts at 175 *per cent.* above the figure for 1939, has played a major part in the deterioration of the lower rented properties. If what used to be considered normal facilities for replacing worn out property were likely to return within any measurable time, there might be something to be said for allowing a proportion of old and worn out houses to become uninhabitable, with the transfer of their occupants to newer property. But few people (except the simple minded politicians on one side or the other) believe that the figures for new housing, included in the party programmes, could have been reached, even had there been no rearmament and export drives. With the diversion of labour and materials to more urgent national requirements, housing must slow down. This being so, it is common sense and indeed common humanity to do everything possible to keep in use houses which are usable or would be usable if properly repaired. The Royal Institution of Chartered Surveyors recognize that there is no prospect of early legislation to deal comprehensively with rent restriction, but at the same time they urge that it is important (indeed urgent) to solve the problem of repairs. So far as can be seen, however, there is no solution for this problem without increasing rents, and this is not a solution which observers of the political scene will expect to see included in either party programme with an election in the offing.

PEDESTRIAN CROSSING REGULATIONS

On October 31, 1951, there come into force two new sets of Pedestrian Crossing Regulations. The first (S.I. 1951 No. 1192) are the General Regulations which are to apply everywhere, except within the London Traffic area, as defined in the London Traffic Act, 1924, sch. 1. The second (S.I. 1951 No. 1193) are the London Regulations, to apply within that area. Apart from minor difference with which we will now deal the regulations are identical.

The differences are, first, that the London regulations contain a provision, which is not included in the General Regulations, to the effect that after the regulations come into force no new crossing shall be established by a road authority within the London Traffic area without the approval of the Minister of Transport. " Road Authority " is defined in s. 16 of the London Traffic Act, 1924. The general requirements as to the submission of schemes for pedestrian crossings are contained in various subsections of s. 18 of the Road Traffic Act, 1934, and by virtue of subs. (10) the Minister of Transport made an Order (S.R.O. 1935 No. 623) dealing with the application of the section to the London Traffic area. We have to confess that we have not been able to trace (though we have no doubt that it exists) the authority by which a " road authority " establishes crossings, but it seems clear from s. 18 that schemes made thereunder for the establishment of crossings, and any variation of such schemes, have to be approved by the Minister. It would appear, therefore, that the provision in the London regulations is designed to make the position in the London traffic area the same as that in the rest of the country.

The other difference is in the form of the penalty regulation, which in each case is reg. 9. The General Regulations are made, *inter alia*, by virtue of s. 18, *supra*, and subs. (8) of that section provides that anyone who contravenes a provision of a regulation shall be liable to a fine not exceeding such amount as may be specified (being £5 or less) as the maximum by the regulations. The London regulations rely for their authority upon the same sections as do the General Regulations, plus, *inter alia*, s. 10 of the London Traffic Act, 1924. Section 10 (3) enacts that regulations made under the section may provide for imposing fines recoverable summarily in respect of breaches thereof not exceeding amounts which are specified in the section and which are much greater than £5.

We find that in fact the London regulations provide that a person contravening any of the provisions of regs. 4, 5, 6 or 8 shall be liable for each offence on summary conviction to a fine not exceeding £5 ; the General Regulations provide that " the maximum fine to which a person shall be liable in respect of a contravention of any of the provisions of regs. 4, 5, 6 or 8 of these regulations shall be £5," thus throwing one back on to s. 113 (1) of the Road Traffic Act, 1930, for the authority to prosecute such offences summarily.

While we are dealing with the penalty regulations the fact that under both sets of regulations the maximum penalty is now £5 must be noted.

We come now to the provisions common to both sets of regulations. Every crossing is to comply with the conditions set out in the first schedule to the regulations. These conditions detail, *inter alia*, the way the studs are to be placed, their permissible size, colours and shapes and projection above the ground level. They provide also (Part I, para. 2) that where at a traffic light crossing part of the indication of the crossing has been formed by a line of metal or other permanent material to indicate a stop line for traffic this line may continue until June 30, 1953, to form part of the indication of the crossing in lieu of studs as required by the new regulations.

There is also a provision (Part I, para. 3) that the discoloration or temporary removal or displacement of one or more studs shall not affect the proper indication of the crossing so long as the general indication of the line is not materially impaired. This may bring some lengthy arguments in attempts by defendants to establish that the general indication has been materially impaired.

Part II of the schedule contains special provisions applying to crossings other than those where there are traffic lights. There must be alternate black and white stripes (the colour of the roadway may itself provide the black) of specified widths and spacings across the crossings. Also there must be what have become known as Belisha beacons, the details of which are also specified. There is in para. 8 a provision corresponding to that in para. 3, *supra*, that a crossing is not to be rendered non-effective by reason of temporary defects in the stripes or beacons.

An entirely new provision is that which authorizes but does not require the use of a sign to indicate the approach to a crossing. This sign, if used, is to be placed not less than forty-two nor more than forty-eight feet from the nearest point of the crossing which it indicates and is to consist of a circle not less than nine inches nor more than eleven inches in diameter with a " bar " not less than $1\frac{1}{2}$ inches not more than $2\frac{1}{2}$ inches wide across the middle dividing two yellow segments which form the remainder of the circle. The colour of the " bar " is not specified, so it is to be, presumably, the colour of the surface of the ground on which the sign is painted. The sign is to be set with the " bar " at right angles to the edge of the road and is to be marked on the

footway as near as possible to the road or in certain cases on the edge of the roadway. Except in the case of permanent one-way streets the sign is to be marked only on the left, or near, side of the road.

This sign is of importance in different ways. It may help drivers to get warning of the nearness of a crossing (though this is probably not its real importance since placed as it is it will not be very obvious to a passing driver) and also it is to mark the limit, at one end, of a stretch of road, *i.e.*, that between itself and the crossing, on which vehicles ordinarily may not stop. The purpose of this appears obviously to be to prevent the crossing itself and a driver's view of it from being obstructed by stationary vehicles which, as observation must have disclosed to our readers, add greatly to the hazards of those who seek to use pedestrian crossings and to the difficulties of drivers who wish to obey the law without coming to a standstill, as a necessary precaution, at each crossing. The exceptions to the prohibition are that a vehicle may stop to enable a person to get on to or alight from it or to enable goods to be loaded or unloaded, or to enable it to do necessary work in connexion with road repairs and similar works. These matters are dealt with in regs. 6 and 7. The former makes it an offence for a driver to stop his vehicle, or any part of it, within the limits referred to unless he can bring himself within one of the exceptions specified in regulation 7.

The regulations give pedestrians an unrestricted right of way on " uncontrolled crossings " (reg. 4). A driver of a vehicle must give precedence to any pedestrian who has set foot on the crossing before any part of the vehicle has come on to it. Where a crossing is divided by a street refuge or central reservation the parts of the crossing on either side of the refuge or reservation shall be treated as separate crossings.

An " uncontrolled crossing " is one to which the provisions of Part II of the schedule apply, and the presence and limits of which are properly indicated as required by the schedule, *and* at which traffic is not for the time being controlled by a policeman in uniform.

A " central reservation " is something, other than a street refuge, which divides a road for the safety or guidance of vehicular traffic.

By reg. 5 a driver must not stop his vehicle or any part of it on a crossing unless he cannot proceed because of circumstances beyond his control or because he has to stop to avoid accident. This provision is similar to that in the present regulations.

Regulation 8 reproduces the present provision that a foot-passenger shall not remain on a crossing longer than is necessary for the purposes of passing over the crossing with reasonable dispatch.

Such are the provisions which will govern the use of pedestrian crossings from October 31, 1951 onwards. It is to be observed that the pedestrian has no special rights on crossings except those given to him, by regulation 4, on uncontrolled crossings. Here his rights are absolute and the obvious duty of a vehicle driver is to approach every uncontrolled crossing at such a speed that he can stop if a pedestrian sets foot on the crossing before any part of the vehicle is thereon. How this will work in practice remains to be seen, for it does appear that, in theory, traffic may be reduced to a mere crawl for fear that, when a vehicle is two yards from the crossing, a foot-passenger will step off the kerb on to his " Tom Tiddler's " ground and the vehicle will have to stop. The answer is, we feel, that the crossings must be used reasonably by pedestrians and that the utmost consideration must be shown by drivers. Is this asking too much of human nature in the year 1951 and thereafter ?

UNIFORMITY IN PROSECUTIONS AND PUNISHMENT

[CONTRIBUTED]

The recent " tulips " case at South Shields (reported at p. 393, *ante*) upon which the Lord Chancellor commented in the House of Lords, raises another matter which appears to need consideration, apart from whether or not the justices were entitled to make a remand in custody part of the punishment. It is that some attempt should be made to obtain as much uniformity as possible in penalizing offenders.

The penalty imposed on a woman with young children (fined £5 apart from the night's detention) was a severe one for picking three flowers, yet perhaps was warranted in the circumstances.

But in many other instances, summary offences, particularly motoring cases in which the facts are almost identical, are punished differently in the various magistrates' courts. It is realized, of course, that in some instances there are local factors which may either cause justices to increase the severity of or mitigate the punishment.

From time to time the *Justice of the Peace* and other authoritative sources have commented on such discrepancies and have supported the opinion that much can be achieved through membership of the Magistrates' Association whereby justices may exchange views and experiences and thus broaden their outlooks.

There is, however, another aspect to the problem. Statistics show that there is a great deal of disparity in the number of prosecutions for identical offences by the police of the different forces. The figures for 1950 have not yet been published, but if we glance at the " Return of Offences relating to Motor Vehicles for 1949 " (published by H.M. Stationery Office) some extraordinary anomalies will be noted.

For example, let us take two cities with police forces of approximately the same strength—Hull and Bradford. At Hull there were 560 prosecutions for motoring offences and 134 written cautions were issued, whereas at Bradford 3,315 offences of the same category were prosecuted and 2,190 written warnings issued.

In two county police forces—Durham and Cheshire (the latter being slightly the smaller)—similar discrepancies may be noticed. Durham prosecuted 158 cases of exceeding the speed limit in a built up area and issued thirteen written warnings, whereas in Cheshire there were 588 prosecutions and forty-five written warnings for the same offences.

Many other similar comparisons could be made between forces of almost identical strength and it must be agreed that the figures are at the least enlightening. No doubt the statistics for 1950 will also show inconsistency. In studying the figures one should remember, however, that no record is kept of the number of offenders who are warned *verbally* by individual police officers.

Surely the conclusions to which we are now led are that there is not enough uniformity : (1) Between police forces in the types of offences which are treated (*a*) by written warning, and (*b*) by prosecution. (2) As has already been indicated, in the punishments meted by the summary courts.

If we accept that these conclusions are correct, how can action be taken to effect a joint improvement ?

One remedy would be for the Chief Constables' Association of Great Britain to endeavour to formulate a uniform method, agreeable to all members, of deciding what offences can be dealt with by caution, and which should be prosecuted.

A delegation from this body could then discuss their decisions with the Magistrates' Association, whose members would thereby become more cognizant of offences which are particularly troublesome, and of those which although necessitating prosecution are not regarded by the police in general as serious.

Following this, the Magistrates' Association could hold a private meeting and with the background knowledge gleaned from the Chief Constables' Association, should be able to devise at least a more definite punishment policy than they have at the moment.

These suggestions are of course open to criticism. One argument against them might be that members of the public would consider that justices had been unduly influenced by the police. There is always, however, the safety-valve of appeal against conviction or sentence, and at least the lorry driver who is prosecuted for exceeding the speed limit in Berkshire could anticipate a similar penalty should he commit the same offence in the same circumstances in Northumberland. That is more than he can expect at present, despite the fact that his vehicle has been nationalized !

R.T.

THE HIGHWAYS (PROVISION OF CATTLE-GRIDS) ACT, 1950

By GRAEME FINLAY

This short Act (of nineteen sections and one schedule) came into force on May 10, 1951, but so far as concerned cattle-grids, works and by-passes provided before July 28, 1950, came into force on that date (s. 19 (3)). The Act extends to all England (except London), Scotland, and Wales, but does not extend to Northern Ireland. Section 1 of the Act enables the "appropriate authorities" to provide cattle-grids to control the passage of cattle along any road for which the appropriate authority is responsible. In relation to England and Wales "appropriate authority" means :

(*a*) For any road repairable by the inhabitants at large ; the highway authority ;

(*b*) For any other roads : (i) if the road is in a rural district, the county council, (ii) if the road is in a non-county borough or urban district, the borough council or urban district council as the case may be, (iii) if the road is in a county borough, the county borough council.

A "cattle-grid" is defined by subs. (5) of the same section as follows :

"A device designed to prevent the passage of animals, or animals of any particular description, but to allow the passage of all or some other traffic and includes any fence or other works necessary for securing the efficient operation of the said device."

The power to provide such grids carries with it power to provide for the road and maintain a cattle-grid in the road or, partly in the road and partly in adjoining land. On July 28, 1950, there were a number of cattle-grids already in existence, totalling about sixty in England and a hundred and twenty in Scotland. The normal effect of the grid is that cattle cannot cross it but that (most) transport and pedestrians can ; the necessity for gates is excluded, and therefore the need for opening and closing them on exit or entrance. When cattle leave the enclosure they do so, usually, by means of a gate.

Section 1 of the Act lays it down, accordingly, that when the local authority do provide a cattle-grid they must also provide and maintain a way by which animals and other traffic unable to get over the cattle-grid may pass along the road. The alternative means of exit may be "a gate or other works on the road or by means of a by-pass" (subs. (2)). The expression "by-pass" is not, perhaps, the most illuminating to apply, but by definition in relation to a cattle-grid means a way over land not comprised within the limits of the road, for the traffic for which the by-pass is provided, with a public right of way thereover :

(*a*) for that traffic or

(*b*) if any part of the by-pass is provided along a way over which there was a public right of way before the by-pass is provided, for the said traffic and for any other traffic entitled to use the way before the by-pass was provided . . ."

For the purposes of enabling them to provide, alter, or improve cattle-grids or by-passes the Minister of Transport and the appropriate authorities are armed with powers of compulsory acquisition. If land is acquired by this method then the Acquisition of Land (Authorization Procedure) Act, 1946, applies (s. 8). For the same purposes, s. 9 of the Act enables appropriate authorities to enter into agreements for the use of land which may provide for payment to owners and others in respect of such use. Any such agreements "run with the land" (subs. (3)) and must be registered in the prescribed manner in the local land charges register.

Section 10 of the Act deals with the question of contributions towards expenditure incurred by appropriate authorities in relation to cattle-grids, and provides that such an authority may enter into an agreement with any person willing to make a contribution towards their expenses of maintenance. In determining whether or not to provide a cattle-grid, an appropriate authority shall be entitled to have regard to the extent to which persons, who in their view will derive special benefit from the grid, are willing to contribute under the section.

Appropriate authorities must undertake responsibility for repairs to cattle-grids, or to any other works provided in connexion with a grid or by-pass, and, where that authority is also the highway authority, they are not entitled to rely on any exemption by way of non-feasance available to a highway authority as the successor to the inhabitants at large—s. 3. A by-pass on the other hand, is placed by the Act in the same position as a highway repairable by the inhabitants at large, for which the appropriate authority are the highway authority. The principle of non-feasance, therefore, applies to such cases.

Other ancillary provisions relate to damage to cattle-grids (s. 12), their removal where they become redundant (s. 2), the approval by the Minister of cattle-grids existing before the Act (s. 18), and the safeguarding of bridges and railways (s. 15). Section 1 of the Act provides for objections in certain cases to be determined in accordance with the schedule to the Act, which sets forth a detailed code of procedure in regard to decisions taken by the appropriate authority under paragraph 1 (*a*), (*b*), and (*c*) thereof.

DUSTBINS AND THE TRANSFER OF BURDEN

By S. McLEOD RICHARDSON, LL.B., *Solicitor*

The proposition that the present state of the general law relating to the burden of providing dustbins leaves much to be desired will receive the whole-hearted support of all parties concerned in this singularly tedious and difficult problem. A number of suggestions have been put forward in an attempt to provide a solution, and those remedies which lie in the hands of local authorities were analysed by Mr. W. E. Lisle Bentham in previous articles on this subject in 114 J.P.N at p. 631 and 115 J.P.N at p. 195. Unhappily, the most satisfactory solution from the administrative point of view—to supply dustbins at the expense of the rate fund—entails a decision on policy which many local authorities find repugnant. Other suggestions are clearly partisan in origin and spring from a desire on the part of landlords or of tenants to see the other party permanently saddled with the burden. The legal practitioner who finds himself embroiled in the bitter dispute receives scant sympathy from his lay acquaintances, who see reason for well-intentioned merriment in the picture of a responsible lawyer turning aside from the apparently more weighty affairs which normally engage his attention to assemble copious notes and masses of figures representing the financial history of a house, and holding forth learnedly and at great length before a solemn and attentive court in the hope of obtaining a decision that John Landlord, the owner of No. 1 Acacia Avenue, should or should not (according to instructions) provide there one dustbin at a total outlay of some 25*s*. (" I ask for six guineas costs, Your Worships "). But this friendly humour finds no reflection in the attitude of those concerned in the dispute. The director of the property-owning company, whose annual dustbin bill amounts to thousands of pounds, the small landlord who put his life's savings into house property in an attempt to provide for retirement, the tenant who perceives an attempt to outflank his statutory defences, and above all, the harassed local government officer, all see cause for enduring sorrow rather than mirth in their predicament under the general law.

It may be asserted, despite heated opposition from the other parties, that the lot of the local authority is the unhappiest of all. They are charged with the duty of ensuring the provision and timely replacement of dustbins ; unless they undertake such provision themselves they are further charged with the judicial exercise of a discretion which may be upset, at their expense, on appeal to a court of summary jurisdiction. After an immense amount of preparatory work they may win their case, only to find the decision reversed, at their greater expense, on an appeal to quarter sessions or by way of case stated on a point of law to the High Court. If the case goes against them, at whatever level the ultimate decision is given, what is then their position ? They are where they started on serving the notice, with two reservations. In the first place considerable time, trouble and expense have been wasted in the preparation and presentation of their own case, and in all probability they have been ordered to pay the costs of similar efforts on their opponent's part ; in the second, one potential means of securing the provision of a dustbin is now denied to them.

In order to improve this position, the draftsmen of local Bills have taken to inserting a dustbin clause designed to introduce into the law a reform long advocated on behalf of local authorities. This was one of the methods dealt with by Mr. Lisle Bentham, and the present purpose is to examine this trend against the background of the existing general law and to hazard a guess at some of its probable consequences. As has been observed, one of the chief disadvantages of the procedure under the general law is that a local authority may fight an appeal brought by the aggrieved recipient of a notice, lose their case, and despite all their efforts be no nearer to the attainment of their object. Under the new procedure an appellant in one of the areas affected would serve a copy of his complaint on the tenant—or, being himself the tenant, on the landlord—who would then have the right to be heard on the appeal, and the court would make " such order as it thinks fit " with regard to the supply of the dustbin. This, it appears at first sight, is the answer to the problem. It would, of course, be easier for the administrator if the law were to decree simply " X shall bear the burden." There could then be no dispute. But this is an occasion for the judicial exercise of a discretion and the action of the local authority must be subject to review by the court. Let us then, it is said, introduce this new system in areas affected by new local enactments, and later perhaps, after the procedure has stood the test of local operation, it may be brought into the general law. The proposal is obviously sound so far as it goes for the appellate procedure is preserved with the added advantage that, whatever the outcome, someone will be required to bear the burden and the local authority need then seek no further for the means of fulfilling their duty. This is the only advantage which local authorities are likely to gain, since up to the hearing of an appeal their difficulties will be the same as hitherto.

But is it really as simple as that ? The influence of the rent restriction legislation, which by its effect in freezing rents threw into unforeseen prominence the question of dustbin supply, is perhaps not to be discarded so easily. What of our old friend the transfer of burden ? In order to satisfy oneself on this point it is necessary to recall the answer of Lord Goddard, C.J., and of Denning, J., in *First National Housing Trust Ltd.* v. *Chesterfield R.D.C.* [1948] 2 All E.R. 658 to the plea of the local authority that the justices should not be upheld in allowing the appeal of a landlord company, who had previously supplied dustbins, since this decision would transfer a burden to the tenant contrary to the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 2 (3) ; and this answer must be read in the light of its criticism in the House of Lords in *Asher* v. *Seaford Court Estates Ltd* [1950] 1 All E.R. 1018. The existing law thus declared must then be considered with the new proposals in an attempt to envisage the effect of their enactment.

The Public Health Act, 1936, s. 75, provides that a local authority who in their district or part thereof have undertaken the removal of house refuse may by notice require the owner or occupier of any building within that district or part to provide a dustbin or dustbins of a type to be specified. The person so served with a notice, being aggrieved, may appeal against the requirement to a court of summary jurisdiction. In the Chesterfield case the owners so appealed successfully and the council called upon the justices to state a case for the opinion of the High Court. They there asserted that the justices had no jurisdiction to give such a decision since its effect was to transfer the burden of supplying dustbins, previously borne voluntarily by the owners, to the tenants, such a transfer being contrary to the provisions of s. 2 (3) of the Act of 1920. This contention was rejected by the court on two grounds, first that the voluntary

" burden " of supplying dustbins was not a burden within the meaning of s. 2 (3) since " burden or liability " there referred to a burden or liability imposed by a contractual term or a term imported by statute and did not operate so as to prevent a landlord discontinuing a benefit voluntarily conferred, and secondly that the decision of the justices allowing a landlord's appeal did not mean that they had put the burden on the tenant. Of this second ground, Lord Goddard said (p. 660)—" I pause once more to say that by deciding in favour of the landlords in this case it is not the fact that the justices have decided that the tenants are to bear the expense. They have simply decided that the landlords are not to." Again at p. 661—" I can find no fault in point of law with the decision of the justices, and I again repeat that the mere fact that they have decided in favour of the landlords in this case does not mean that the justices have put the burden on the tenant. In fact, they have no power to do so. If this matter had been present to the mind of the draftsman or Parliament, some provision might have been made for all parties to be brought before the court in cases of this description, where a liability might be thrown on one party or the other. There is no such provision in the Act, and there is no provision by which the tenants could have been brought before the court in this case. Under the provisions of the Act the only parties to the appeal are the owners or the occupiers, as the case may be, according to whichever is served, and the local authority and the justices must come to the fairest decision they can on the material before them as between these two parties." The matter is now actively present to the minds of draftsmen and in the areas affected provision is being made for all parties to be brought before the court and for the liability to be thrown on one party or the other; the new provisions will bring about the exact situation envisaged by Lord Goddard. Thus, the very factor whose absence was necessary to the second ground of the decision on this point will now be present in some areas.

The first ground of the *Chesterfield* decision, that the " burden " was not a burden within the meaning of the Act, was expressly disapproved by the House of Lords in Asher's case when Lord Normand referred to the observations of Lord Goddard, C.J., and Denning, J., on this point, and continued: " These observations are contradictory of the construction of " burden " by the Court of Appeal in the present case . . . In my opinion, the observations of Lord Goddard, C.J., and Denning, J., should be disapproved. It is not a necessary consequence that *First National Housing Trust Ltd.* v. *Chesterfield R.D.C.* should be held to have been wrongly decided, for there was an alternative ground of judgment that the court of summary jurisdiction had not placed any burden on the tenant because, in fact, it had not decided that the tenant must bear the expense of providing the bin." The court had not imposed, and could not impose, the burden on the tenants; the promoters of local Bills now endeavour to equip the courts with the necessary powers to do so. Thus the first ground of the *Chesterfield* decision stands disapproved by the House of Lords; voluntary provision of a dustbin, it seems, is a burden within the meaning of s. 2 (3). A decision of the justices that a burden need no longer be borne is not a transfer of burden within the meaning of the subsection since the justices merely remove the burden without directing where it shall lie. These are the past stages—now under the development by local legislation, the justices will be empowered to direct where the burden shall lie. *Prima facie* at least, a burden will be transferred where the extended jurisdiction is exercised in favour of a party who has previously supplied dustbins voluntarily, and the question must necessarily arise whether the local Act, within the area of its operation, overrides the provisions of the Act of 1920 to the extent necessary to allow to the justices an unfettered discretion. When the provisions of the Act of 1936 were judicially considered in this connexion, the ultimate effect of the justices' decision was disregarded and only the immediate effect was considered relevant. This escape is no longer open where the new provisions apply, there can be no doubt that the immediate effect of a decision intended to reverse the previous practice will be to impose a burden as opposed to its mere lifting as in the Chesterfield case. The same question might arise under the general law only if a local authority served a notice on the one party, the other having previously voluntarily undertaken the supply of dustbins.

To displace existing statute law, a new provision must be precise and the intention of the legislature to bring about this effect must be clearly expressed or necessarily implied. Courts will be loth to disregard the general law if the local Act provisions may be construed so as to permit of decisions which will accord with that law. Clause 82 (71 as amended) of the West Riding County Council (General Powers) Bill, to take an example, provides that " the appellant shall serve a copy of his notice of appeal on the other person referred to (the owner or occupier, according to circumstances) and on the hearing of the appeal the court may make such order as it thinks fit with respect to the person by whom the dustbin should be provided . . ." Although on the face of the clause it appears that an unlimited discretion is to be allowed to the justices, yet it would seem possible that this provision may be construed as permitting the justices to " think fit " to order the supply of a dustbin by a tenant only where he has not previously enjoyed the bounty of his landlord. The reverse, of course, would apply in appropriate cases, but these would be comparatively rare. Such an interpretation would make a nonsense of the appellate procedure in many cases, and the effect in such cases of the local law, if so interpreted, could have been achieved by a simple provision that he who through generosity had previously borne the dustbin burden should henceforth continue to bear it at the behest of the law; a tidy situation perhaps, but hardly satisfactory. It may be that this effect of one possible interpretation of the local Act provisions will weigh heavily in favour of the other, that despite the general law as interpreted by Lord Goddard and Lord Normand, the local Acts will give to justices within their areas of application a free discretion, limited only by the requirement that they shall have regard to the terms of any tenancy agreement. But the wording of the local provisions is permissive, and though permissive words conferring jurisdiction on tribunals have been construed as having a mandatory effect, it must be remembered that the words of the Act of 1936, which confer a discretion on the local authority, and thus indirectly on the appellate Court, are also permissive. If, as seems clear from the observations of Lord Goddard and Lord Normand, the effect of these words is to permit only the easing and not the transfer of a voluntary burden, can it be argued successfully that such words as " may make such order as it thinks fit " carry sufficient force to override the general law within their area of application?

No doubt it will be argued, and forcibly so, on behalf of landlords who find themselves sinking further into the morass which has deepened as a result of the new provisions. The element of uncertainty, however, is likely to remain until removed, for better or for worse, by a decision of the High Court. It is a feature of British justice that the highest Courts are open to all, however humble the litigant and however trifling his concern. But the common dustbin, normally just another necessary and useful article, is enjoying a quite unmerited prominence as a result of the unfortunate position of landlords. The search for an answer to the problem, it is felt, must continue, since the local Act development is unlikely materially to improve the position. Meanwhile, however, all parties concerned will watch the local Act provisions with care. Not the least vigilant among these

will be the local authorities themselves who will scrutinize decisions closely until it is clear whether the words " such order as it thinks fit with respect to the person by whom the dustbin should be provided " are sufficiently limited by the preceding words to exclude any possibility of their being interpreted so as to include the local authority, who by s. 75 (3) of the Act of 1936 are among the starters in the dustbin stakes. And, of course, a corporation is a person, within the meaning of the Act.

RECOVERY OF POSSESSION OF ALLOTMENTS

By CYRIL WILSON, *Deputy Town Clerk, Borough of Harrogate*

The status of an allotment holder occupying a plot provided by a local authority is usually a humble one, and it might be hoped that the question as to what form and length of notice must be given by the local authority in order to determine his right of occupation would admit of a reasonably simple and straightforward answer.

In fact an examination of the growth of statutes now comprized in the Allotments Acts, 1908 to 1950, upon which has been grafted the " emergency " legislation contained in reg. 62A of the Defence (General) Regulations, 1939 (S.R. & O. 1939 No. 927) and the Cultivation of Lands (Allotments) Orders, 1939 and 1941 (S.R. & O. 1939 No. 1316 and 1941 No. 1431) reveals quite a variety of possible replies.

The main distinction lies between (i) " allotments "—using that term in the wide sense in which it is used in the Small Holdings and Allotments Act, 1908, so as to include (by virtue of the definition in s. 1 of the Allotments Act, 1925) any parcel of land not more than five acres in extent cultivated or intended to be cultivated as a garden or farm or partly as a garden and partly as a farm, and (ii) " allotment gardens "—that is to say, allotments not exceeding forty poles in extent wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family (s. 22 of the Allotments Act, 1922).

It may be noted in passing that the *obligation* of borough and urban district councils with populations of less than ten thousand is limited to the provision of allotment gardens by s. 9 of the Allotments Act, 1950, as against the former obligation to supply allotments not exceeding one acre (s. 23 (4) Small Holdings and Allotments Act, 1908).

As regards the tenant of an allotment in the wide sense there is an apparent freedom of contract, and the local authority may, under s. 28 of the Small Holdings and Allotments Act, 1908, make such rules as appear to be necessary or proper for regulating the letting of allotments under that Act. Whatever rules the local authority may make in this regard however (and they are not obliged to make any at all) the tenancy of such an allotment will now generally be a letting of an agricultural holding, and thus subject to the general requirement of a twelve months' notice expiring at the end of the current year of the tenancy (ss. 1 (1) and (2) and s. 23 (1) of the Agricultural Holdings Act, 1948).

It is true that the Small Holdings and Allotments Act, 1908 (s. 30) provides that one month's notice is sufficient where the tenant has (*inter alia*) transgressed the local authority's rules, or removed his residence more than one mile out of the local authority's area, but it would appear that the provisions of this section have largely been overridden by the above mentioned provisions of the Agricultural Holdings Act, 1948. It is, nevertheless, still possible that there may be allotments which are not in fact agricultural holdings, for instance, because they are not used for the purpose of a trade or business, and are accordingly outside the definition of an agricultural holding contained in s. 1 of the Agricultural Holdings Act, 1948 (*see* the recent Court of Appeal decision in *Stevens* v. *Sedgman* [1951] 2 All E.R. 33). In respect of these plots the provisions of the Small Holdings and Allotments Act, 1908, may still be relevant, and any agreed period of notice effective.

The tenant of an " allotment garden " on the other hand, is not within the protective embraces of the Agricultural Holdings Act, 1948, allotment gardens being expressly excluded from the definition of an agricultural holding, and must turn for support to the Allotments Act, 1922, s. 1 of which (as amended by s. 1 of the Allotments Act, 1950) generally entitles him to twelve months' notice expiring on or before April 6 or on or after September 29.

He may, however, find himself dispossessed (if his tenancy agreement so provides) by three months' notice if the land upon which his allotment garden stands is required by his landlords for building, mining, or certain other purposes (s. 1 (*b*) and (*d*) of the Allotments Act, 1922). Moreover, if the land was originally unoccupied land, upon which the Council have merely made entry under s. 10 of the Allotments Act, 1922, he may find himself dispossessed conjointly with his landlords on three months' notice, should the owner require the land himself for a purpose other than agriculture, sport, or recreation (s. 10 (3) of the Allotments Act, 1922).

Regulation 62A of the Defence (General) Regulations, 1939, is confined in its application to the letting of allotment gardens and, on the face of it, does no more than to permit a local authority to let land in their occupation (including parks and open spaces under their control) as allotment gardens despite any covenant or restriction to the contrary.

Section 6 of the Allotments Act, 1950, however, excludes lettings made under the regulation from the general rule of twelve months' notice by providing that s. 1 of that Act shall not apply to them. The result is that the original provisions of the Allotments Act, 1922, requiring only a six months' notice served between the prescribed dates, continue to apply to such lettings. The tenancies of such allotment gardens as have been provided expressly under the powers given by the regulation will automatically cease on the expiry of the regulation, which is one of those continued in force until December 10, 1951, by virtue of the Supplies and Services (Transitional Powers) Act, 1945, and the Supplies and Services (Continuance) Order, 1950 (S.I. 1950 No. 1769).

Allotment holders occupying plots on land requisitioned by local authorities under the Cultivation of Lands (Allotments) Orders, which orders are similarly continued in force until December 10, 1951, are in a class apart. They are not tenants and hold their plots under an " arrangement " made either directly between themselves and the local authority or through an allotments society (*see* para. 6 of the 1939 order).

This arrangement should, it would appear, be in the nature of a licence to cultivate given by the local authority, since the arrangement is subject to the local authority's right to terminate

it at any time (para. 9). No length of notice is prescribed, but termination between April 6 and September 29 requires the consent of the Minister of Agriculture and Fisheries (para. 10).

Whatever view may be held as to the general justification for this lack of uniformity in the matter of notice as between one category of allotment holder and another the moral to be drawn is surely that local authorities should (in the mutual interest of themselves and their allotment holders) draw their agreements with tenants or occupiers in such a way as to leave no doubt as to the legislative provisions applicable to the particular agreement and the type and period of notice required to determine it.

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Ormerod, JJ.)

July 18, 1951

LINES *v.* HERSOM

Road Traffic—Driving while disqualified—" Special circumstances "—Penalty—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 7 (4).

CASE STATED by the appeal committee of Hertfordshire Quarter Sessions.

At a court of summary jurisdiction at Watford informations were preferred by Police Constable Ivor Lines (" the prosecutor ") charging Charles Hersom (" the defendant ") (*a*) with unlawfully using a motor-vehicle, there not being in force in relation to the user of the vehicle such a policy of insurance as was required by the Road Traffic Act, 1930; and (*b*) for that, then being disqualified for holding or obtaining a driving licence, he drove the vehicle on the road contrary to s. 7 of the Road Traffic Act, 1930. For each offence the defendant was sentenced to one month's imprisonment, the sentences to run concurrently, and was disqualified for holding a driving licence for twelve months. The defendant appealed to quarter sessions on the ground that the sentence of one month's imprisonment for each of the offences was too severe. Quarter sessions varied the sentences by imposing a fine of £15 for both offences, but stated a Case with regard to the conviction of driving while disqualified. In it they expressed the opinion that a fine was an adequate punishment and asked the court whether in the circumstances they were justified in substituting a fine for the sentence of imprisonment.

Section 7 (4) of the Road Traffic Act, 1930, provides: " If any person who . . . is disqualified for holding or obtaining a licence . . . drives a motor-vehicle . . . on a road, that person shall be liable on summary conviction to imprisonment for a term not exceeding six months or if the court think that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence, to a fine not exceeding £50, or to both such fine and such imprisonment . . . "

Held, that no different meaning was to be attached to the words " special circumstances " in s. 7 (4) of the Act from that applying to them in s. 15 and s. 35; that the proper interpretation of s. 7 (4) was that on proof of the offence of driving when disqualified the sentence should, *prima facie*, be one of imprisonment; and that, as no special circumstances existed in the present case, the sentence imposed by the justices in respect of the offence must be restored and quarter sessions must say how much of the fine of £15 was attributable to the first charge.

Counsel: *F. H. Lawton* for the appellant; *Frank Milton* for the respondent.

Solicitors: *Solicitor for Metropolitan Police*; *Penman, Johnson & Ewins*, Watford.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

July 19, 1951

FARQUHAR *v.* CHANCE BROS., LTD.

Factory—Safe means of access to place of work—Platform erected on scaffold—Ladders kept within reasonable distance—Knowledge of workman—Different method of access used—Question one of degree and fact—Factories Act, 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 67), *s.* 26 (1).

CASE STATED by Smethwick justices.

At a court of summary jurisdiction at Smethwick an information was preferred by the appellant, Dorothy Farquhar, an inspector of factories, charging the respondents, Chance Bros., Ltd., that they, being occupiers of a factory, " contravened the provisions of s. 26 (1) of the Factories Act, 1937, in that safe means of access were not provided to a place at which a person had to work, to wit, a scaffold under the tapping holes of No. 9 furnace in the pressed and blown department of the said factory and in consequence of such contravention William Reginald Woodbine suffered bodily injury."

Woodbine was a millwright who had been lent by his employers for work at the respondents' factory and had been working there for the last two years. On the day in question, he and other men had to do some work underneath a furnace which was some sixteen feet from the ground. Accordingly, a scaffold had been erected, and a platform put on the scaffold. The ordinary way of getting on the platform would be by a ladder, but on the occasion in question the men, of whom Woodbine was one, chose to attempt to reach the platform by getting on a girder about thirteen feet six inches above the ground and two feet six inches below the level of the platform. There was a gap between the girder and the platform of about four feet six inches, and the men began to stride across it. While Woodbine was attempting to reach the platform by this method and was astride the gap, holding on to one of the upright pillars of the scaffolding, he lost his hold and fell to the ground. No ladder was actually in position for the purpose of reaching the platform at the time of the accident, but there were stores close by in which an adequate supply of suitable ladders was kept. Woodbine knew that such ladders were available in the stores and that they were provided for his use and he could have had the use of any of them if he had wished. On a previous occasion, when he had been called on to do the same sort of work, he had reached the platform from the ground by means of a ladder. The justices found that the respondents had not failed to provide a safe means of access and dismissed the information. The prosecutor appealed.

Held, that the question was largely one of degree and fact and, on the facts found by the magistrates, it was impossible to interfere with their decision. The appeal must, therefore, be dismissed.

Counsel: *Cooke* for the appellant; *E. G. H. Beresford* for the respondent.

Solicitors: *Solicitor, Ministry of Labour and National Service*; *Collissons & Dawes*, for *Wragge & Co.*, Birmingham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

July 19, 1951

R. *v.* WEST KENT QUARTER SESSIONS APPEAL COMMITTEE. *Ex parte* FILES

Quarter sessions—Appeal from magistrates' court—Plea of Guilty—Failure to understand nature or gravity of offence—No right of appeal—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 36 (1).

MOTION for order of prohibition.

At a court of summary jurisdiction at Northfleet one Sydney Weill pleaded Guilty to an information charging him with driving a motor vehicle to the danger of the public, and was fined £20 and disqualified for holding a driving licence for twelve months. He appealed to West Kent Quarter Sessions against his conviction on the ground that he had pleaded Guilty owing to a mistake as he did not understand the nature or gravity of the offence. At quarter sessions objection was taken by the prosecution that the appeal could not be heard, but quarter sessions were of opinion that the decision in *R. v. Forde* (87 J.P. 76; [1923] 2 K.B. 400) gave them power to entertain it. The prosecutor obtained leave to apply for a writ of prohibition prohibiting the appeal committee from hearing the appeal on the ground that they had no jurisdiction to entertain it by reason of the plea of Guilty in the magistrates' court. By s. 36 (1) of the Criminal Justice Act, 1948: " A person convicted by a court of summary jurisdiction shall have a right of appeal—(*a*) if he pleaded Guilty or admitted the truth of the information, against his sentence . . . "

Held, that the appeal committee should have refused to entertain the appeal, and that prohibition must issue. *R. v. Forde*, *supra*, was a decision of the Court of Criminal Appeal and depended on the terms of the Criminal Appeal Act, 1907, which contained no limitation confining the right of appeal to persons who had pleaded Not Guilty.

Counsel: *Buzzard* for the appellant; *Clapham* for the justices.

Solicitors: *Eric W. G. Weale*, Maidstone; *Davenport, Lyons & Barker*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 46.

IN CHARGE OF A MOTOR VEHICLE. ANOTHER DECISION

On July 9, 1951, a defendant appeared at Feltham, Middlesex, Magistrates' Court and pleaded " Not Guilty " to a charge of being in charge of a motor vehicle whilst under the influence of drink to such an extent as to be incapable of having proper control of the vehicle contrary to s. 15 of the Road Traffic Act, 1930.

Evidence was given for the prosecution by an acquaintance of the defendant, that, after they had consumed three or four beers in company with others at an hotel they had left the hotel at closing time and had gone to the witness's home. The defendant had driven there in his lorry. At the witness's home the party had finished a bottle of whisky and taken other drinks, and the witness had suggested to the defendant that he stayed the night because, according to the witness, the defendant was tired. Shortly before retiring to bed, the defendant complained loudly to the witness that he had lost £2 and became violent. The witness sent for the police, but in the interval before the police arrived the defendant broke a mirror. When the police officer arrived he saw the defendant standing on the footway outside the witness's house. There was a lorry stationary in the roadway, and the defendant was standing near the nearside cabin door of the lorry. He had no collar and tie, but was otherwise fully dressed. Shortly afterwards, at 2.30 *a.m.*, the defendant was examined at the police station, and found by the doctor to be suffering from the effects of alcohol to such extent as to be unfit to drive a car.

The defendant, in evidence, said that the lorry belonged to his business partner and each drove it to market on alternate mornings at about 5 to 5.30 *a.m.* On the night in question, the defendant had agreed to take a suitcase to the house of the prosecution witness and leave it there, and also to leave the lorry outside that house. According to the defendant the arrangement was that his partner was to pick up the lorry from outside this house on the following morning at between 5 and 5.30 *a.m.* The defendant said that after being at the party at the prosecution witness's house, he did not intend to drive the lorry any more. The defendant also said that at 2.30 *a.m.* he was finished with the lorry, was not in charge of it, and had no intention of driving it.

The Chairman (Mr. Vernon Gattie), announced that the bench were satisfied that the defendant was in charge of the lorry at the material time, and declined to find special reasons for not disqualifying him from driving for twelve months. A fine of £5 and £8 costs was imposed.

Defendant was also charged with malicious damage to the mirror and pleaded guilty to this charge. He was fined 10*s.* upon this charge.

COMMENT

Mr. Frank Bevan, Clerk to the Spelthorne Justices, to whom the writer is indebted for this report points out that the case deals with a somewhat wider aspect of the words " in charge " than that which was considered by Sir Gervais Rentoul, K.C., in 1945 and which formed the subject of an article at 109 J.P.N. 117, since the defendant in this case was not in the car at the time he was observed by the police officer, but merely standing on the footway near the driving cab of the lorry. On the other hand, he had been entrusted with the lorry by his business partner who, according to the defendant's own story was not due to appear on the scene and take over the lorry until some three hours after the defendant had been found by the police. There was also the fact that although the defendant had agreed to stay the night at the house of the prosecution witness, he had subsequently had a violent quarrel in the house and it was shortly afterwards that he had been found by the police in the roadway outside near the lorry.

Mr. Bevan adds that having regard to the wording of s. 15 (1) of the Road Traffic Act, 1930, *viz* : " Any person who, when driving or attempting to drive or when in charge of a motor vehicle on a road or other public place . . . ", it certainly does appear that the words " in charge " must contemplate a different set of circumstances from that of a drunken person attempting to drive, and that if such a person had charge of a car which is on a road or public place ready for immediate use and that person is nearby and knows how to drive, he is " in charge " of the vehicle within the meaning of the section, since the wording of the section does not require anything more to be proved than that the defendant was in charge of the vehicle on a road or public place, and indeed, the potential danger of a drunken man being near his car in such circumstances is obvious.

It may be recalled that the present writer dealt fully last year with these troublesome words in an article entitled " When is a person in charge of a car " which appeared at 114 J.P.N. 751. In that article the writer expressed strongly the hope that an authoritative ruling would be given as to the true meaning of the vital words " in charge of."

The writer reiterates that hope fervently for, with all due respect to the Spelthorne Justices, it seems open to doubt whether it was ever the intention of the legislature that the words should be so widely construed. The mischief aimed at was, surely, the driver whose standard of driving was lowered as a result of having taken liquid refreshment of an intoxicating nature. It is important to see that in giving effect to laudable efforts to drive such pests off the roads the scope of the vital words is not strained. R.L.H.

No. 47.

AN UNSUCCESSFUL ATTEMPT TO TAKE MONEY OUT OF THE COUNTRY

An amusement caterer and development engineer appeared at Liverpool City Magistrates' Court on July 17, 1951, to answer an information laid on behalf of the Commissioners of Customs and Excise alleging that on a date in March of this year, the defendant was knowingly concerned in a fraudulent attempt at evasion of the laws and restrictions of the Customs relating to certain prohibited goods, *viz.* : 996 Bank of England £5 notes, the export of which is prohibited by virtue of s. 22 of the Exchange Control Act, 1947, contrary to s. 186 of the Customs Consolidation Act, 1876. The defendant's wife was similarly charged.

For the prosecution, it was stated that defendant and his wife and two young daughters arrived at Liverpool landing stage and defendant said that he had £7 for the use of himself and family. He was searched but nothing was found. He appeared agitated and when his wife was about to be searched by a woman Customers officer he said : " Yes, my wife has currency." The wife and the woman searcher were left alone, and the wife then produced a bundle of £5 notes, saying that she had been concealing them around her waist, but had taken them out because she was uncomfortable.

Mr. Basil Neild, K.C., defending, said that defendant accepted full responsibility, and his wife was merely the vehicle for carrying the notes.

The learned stipendiary magistrate (Mr. A. McFarland) granted the wife absolute discharge saying that she had acted under the husband's influence.

The male defendant forfeited the sum of £4,980 found on his wife, and in addition was fined £1,000 and allowed three months to pay the fine with an alternative of twelve months' imprisonment in default of payment.

COMMENT

This report surely demonstrates that this particular game is not worth the candle and it will be recalled that in recent years the penalties for this type of offence have been considerably stepped up.

By s. 15 of the Finance Act, 1935, it was provided that a person convicted of an offence under s. 186 of the Act of 1876 might, in lieu of being ordered to pay a penalty, be imprisoned for a term not exceeding two years. By s. 12 of the Finance Act, 1943, it was enacted that a term of imprisonment not exceeding two years might be awarded in addition to the penalties prescribed by the Act of 1876, and by subs. 4 of the section provision is made for the imposition of an additional term of imprisonment not exceeding twelve months in default of payment where the sum adjudged to be paid exceeds £250.

(The writer is indebted to Mr. H. A. G. Langton, M.B.E., clerk to the Liverpool City Justices, for information in regard to this case.) R.L.H.

PENALTIES

West Riding Quarter Sessions—June, 1951—(1) neglecting two children aged two and four, (2) stealing 13 *cwt.* of coal—two years' imprisonment. Defendant, a man of thirty-three who asked for another case of theft to be taken into consideration, had been offered one hundred and twenty-two jobs by Labour Exchanges and had accepted sixty-six of them, in none of which he remained for more than four days.

Salop Assizes—June, 1951—motor manslaughter—nine months' imprisonment—disqualified from driving for twelve years. To pay £100 towards the cost of the prosecution. Defendant, a farming trainee aged twenty-three, drove a car at high speed over a bridge and crashed into a wall on the off-side killing a man standing there. Defendant of excellent character and record.

Oxford—June, 1951—being under the influence of drink when in charge of a car—fined £20, and disqualified from driving for a

year. Defendant, an undergraduate aged twenty-four, was celebrating the completion of "schools."

West Bromwich—June, 1951—(1) stealing brass fittings value £19, (2) stealing brass fittings value £8 (two defendants). First defendant—three months' imprisonment on each charge (concurrent). Second defendant fined £5 on each charge. First defendant the forty-three year old father of second defendant aged twenty, the eldest of nine children. The father asked for a further charge to be taken into consideration.

Oxford—June, 1951—stealing, as bailee, £5—fined £5. Defendant, a homeless van driver aged thirty-eight, was handed the money by a woman with whom he had been lodging as deposit for the hire of a car and when the money was refunded to him he retained it.

West Bromwich Quarter Sessions—June, 1951—office breaking with intent to commit a felony (two defendants)—first defendant fifteen months' imprisonment, second defendant twelve months' imprisonment. First defendant had a previous conviction involving a prison sentence.

Gloucestershire Quarter Sessions—June, 1951—(1) office breaking and safe stealing, (2) larceny, (3) wounding—(1) two years' imprisonment, (2) one year's imprisonment, (3) four years' imprisonment the sentences to run concurrently.

Thames Magistrates' Court—June, 1951—failing to make Census Return—fined £5. To pay £2 2s. costs. Defendant a church organ builder, declined on principle, to complete the form although given every opportunity.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

THE ADVISORY COMMITTEES

Lt.-Col. M. Lipton (Brixton) asked the Attorney-General in the Commons by what method advisory committees were appointed to recommend suitable persons as justices of the peace.

The Attorney-General, Sir Frank Soskice, replied that advisory committees were appointed by, and at the discretion of, the Lord Chancellor in all parts of the country, with the exception of the County Palatine of Lancaster. In the latter area, appointments were made by the Chancellor of the Duchy. In selecting persons to serve on advisory committees, they endeavoured to follow the recommendations of the Royal Commission on Justices of the Peace of 1946, as far as they considered it to be practicable to do so.

Lt.-Col. Lipton: "Is my right hon. and learned Friend aware that there is still some dissatisfaction in the way in which the present procedure operates, and can he say whether one recommendation of the Royal Commission—namely, that the names and addresses of the secretaries of the advisory committees should be published—has been put into effect?"

The Attorney-General: "That is a recommendation which my noble and learned Friend has in mind."

PUNISHMENTS

The Secretary of State for the Home Department, Mr. J. Chuter Ede, made a statement on the Report of the Franklin Committee on Punishment in Prisons and Borstal Institutions.

He said he felt able to accept the great majority of their recommendations. Some of the changes proposed had already been put into effect; others would require alterations in the prison and borstal rules relating to England and Wales and amending rules would be laid before Parliament in due course.

Regarding prisons, the committee reached the conclusion that prisoners charged with offences against prison discipline should not be allowed legal or other representation at the hearing before a visiting committee (or board of visitors). The Committee, however, made various recommendations about the procedure to be followed by visiting committees when dealing with prison offences.

He accepted those recommendations and had decided that the procedure should be brought more nearly into line with that followed by courts of summary jurisdiction, and that the prison rules should be amended so as to provide that not less than two and not more than five members of the visiting committee should adjudicate on any case brought before the committee.

He also accepted the Departmental Committee's proposal that restricted diet No. 2 should be replaced by another form of punitive diet and a new diet was being devised by his medical advisers. He accepted in principle the committee's proposals that a special prison should be set aside for prisoners who persistently misbehaved and defied authority, but in view of the difficulties of accommodation he saw no early prospect of implementing that recommendation.

Regarding borstal institutions, he had taken note of the committee's view that discipline needed tightening and he had asked the Prison Commissioners to bring to the notice of governors the comments made by the committee on the importance of good appearance and good manners as an element in training. He accepted the proposal that in future only the board of visitors should have power to deal with absconding and certain serious offences against discipline, and he also agreed that the procedure at adjudications should be altered in much the same way as in prisons.

The committee's recommendations for a special institution for boys who by persistent misconduct interfered with the training of others had been substantially met by the borstal institutions set up in the former prison at Hull.

Regarding dietary punishment in borstal institutions, which was suspended in July, 1948, on his instructions, for an experimental period, the committee recommended that borstal governors and boards of visitors should have restored to them the power to impose for limited periods restricted diet No. 1—*i.e.*, a bread and water diet.

He accepted that recommendation, but proposed to qualify the exercise of that power of punishment by advising governors and boards of visitors that it should be used only as a last resort when other forms of punishment had failed or in exceptional cases of serious misconduct where no other form of punishment was deemed appropriate.

MAINTENANCE ORDERS

Replying to Miss I. Ward (Tynemouth), Mr. Ede stated that 3,544 men were committed to prison in 1950 for failing to pay maintenance to their wives. Without scrutiny of personal files at the prisons, it would not be possible to say for how long they were detained in prison and how many paid during their imprisonment the whole or part of the arrears of maintenance owed by them.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Monday, July 23

NATIONAL ASSISTANCE (AMENDMENT) BILL, read 2a.
SLAUGHTER OF ANIMALS (AMENDMENT) BILL, read 3a.

Tuesday, July 24

TELEPHONE BILL, read 2a.
FINANCE BILL, read 3a.

Thursday, July 26

RESERVE AND AUXILIARY FORCES (PROTECTION OF CIVIL INTERESTS) BILL, read 3a.
MINERAL WORKINGS BILL, read 3a.

HOUSE OF COMMONS

Wednesday, July 25

PNEUMOCONIOSIS AND BYSSINOSIS BILL, read 1a.

Friday, July 27

GUARDIANSHIP AND MAINTENANCE OF INFANTS (NO.2) BILL, read 3a.
PRICE CONTROL AND OTHER ORDER (INDEMNITY) BILL, read 3a.
MIDWIVES BILL (LORDS), read 3a.

PERSONALIA

APPOINTMENT

Mr. J. V. Trewavas, LL.B., temporary assistant solicitor to the borough of Stretford, has been appointed an assistant solicitor to the Plymouth City Council.

OBITUARY

Sir Charles Stewart Findlay died in Edinburgh on July 22, at the age of seventy-six. An Indian civil servant, he was appointed Sessions Judge in 1909, and became Legal Remembrancer in 1913. In 1925 he was appointed Judicial Commissioner. After his return to England in 1932, he became Reader in English Law in the University of Edinburgh, which position he held until 1943.

Mr. A. H. Walters, assistant official receiver since 1949 for the Bristol-Exeter districts, died recently.

NEW COMMISSIONS

CUMBERLAND COUNTY

Stanley Allason, Lanercost Road, Brampton.
William Atkinson Abbey Farm, St. Bees.
Miss Margaret Beckett, Fair View, 26, Scalegill Road, Moor Row.
Miss Eveline Brown, West View, 40, Loop Road South, Whitehaven.
James Cooper, 2, Nairn Street, Flimby, Maryport.
Philip Lowthian Davidson, 38, St. John Street, Keswick.
Francis Dempster, 16, Carter Garth, Great Clifton, Workington.
Ronald Fryer, Dickinson, Red How, Lamplugh.
Miss Dorothy Elizabeth Dixon, Sandhill, Alston.
James Cooper Evans, 1, York Road, Arrowthwaite, Whitehaven.
Tom Foster, 10, Horn Hill, Millom.
Mrs. Helen Fox, Fawe Park, Keswick.
Dr. Edith Vyvyan Goldsbrough, Arlosh House, West Street, Wigton.
Mrs. Sarah Grave, 13, The Headlands, Keswick.
Reginald Hartley, 19, The Hawthorns, Keswick.
Thomas Hartley, Penrith Road, Keswick.
Harry Harold Hilton, Manager's House, Ravenglass-Eskdale Railway, Ravenglass.
George Arthur Hodgson, 51, Waver Street, Silloth.
Henry Jackson, Moorside Farm, Culgaith, Penrith.
George Victor Maughan, Saughtreegate, Heads Nook, Carlisle.
Thomas McDonald, Glendale, Camerton, Workington.
Herbert Alexander McVittie, Brunswick House, Penrith.
Joseph William Penn, School House, Great Broughton, Cockermouth.
Mrs. Doris Annie Ritson, 51, Kirkgate, Cockermouth.
Robert Robertson, Wonstead, Nicholson Lane, Penrith.
Harold Rowntree, 13, Solway Road, Moresby Parks, Whitehaven.
George Scott, The Garage, Lorton, Cockermouth.
Mrs. Ann Burrow Thomas, 258, Moss Bay Road, Workington.
Robert Townsley, 31, Roper Terrace, Workington.
Henry Walton, Howburn, Alston.
Dr. Margaret Winifred Watson, Attorgarth, Distington.
George Thwaites Weir, 1, Stainburn Road, Workington.
John Rodger Williams, Shrubland, Whitehaven.
Dr. James Wilson-Young, Holmacre, Workington.

GLAMORGAN COUNTY

Hugo Robert Brooke Boothby, Fontygary Farm, Rhoose.
James Brown, 1, Heathfield Crescent, Llanharan.
John Trevor Davies, 37, Romilly Park, Barry.
Miss Kathleen Emily Davies, 6, Plymouth Road, Penarth.
Mrs. Kate Davies, Leyshon Road, Gwaun-cae-Gurwen.
Ernest Edwards, 5, Cawnpore Street, Cogan.
Stanley Baldwin Edwards, 9, Vere Street, Cadoxton, Barry.
Mrs. Marjorie Evans, Bronwydd, Pontypridd.
Percy Graham Gaen, 16, Theodore Road, Port Talbot.
Mrs. Elizabeth David Irene Jenkins, 173, Bute Street, Treherbert.
Alfred Stradling John, 6, Tyfica Crescent, Pontypridd.
Trevor Jones, Norton, Merthyrmawr Road, Bridgend.
William Llewelyn, 50, Brook Street, Blaenrhondda.
Miss Joyce Eluned Mainwaring, 11, Aubrey Road, Penygraig.
Sidney Mitchell, 5, George Street, Tonypandy.
Mrs. Norah Frances Moffit, Aberdare.
Edric Morgan Nicholas, 59, Salisbury Road, Maesteg.
William Bowen Owen, 89, Pengam Road, Ystrad Mynach.
John Cyril Radcliffe, O.B.E., 27, Porth-y-Castell, Barry.
Mrs. Catherine Reymond Reed, 11, Westbourne Terrace, Llanharan.
Thomas Arthur Roderick, 41, Herbert Street, Aberdare.
Mrs. Annie Mary Russell, Delfryn, Pontyclun.
David Evan Thomas, Drosymer Farm, Llantwit Major.
Glyn Morgan Thomas, Croesty Farm, Coity, Bridgend.
William Stanley Watkins, King Street, Neath and Llandarcy, Skewen.
Mrs. Elizabeth Ann Williams, 7, Castle Street, Maesteg.
Idris Williams, 34, Highfield, Ferndale, Rhondda.
William Williams, Woodside, Graigfelen, Clydach.

LINCOLN (PARTS OF LINDSEY) COUNTY

Dr. Edward Cawdron Cordeaux, Goulceby, Louth.
Stanley Whyles Hankin, The Mill, Addlethorpe, Skegness.
Mrs. Catherine Mary Holt, Nettleton House, Bigby High Road, Brigg.
Mrs. Margaretta Annie Brayshay Scholey, Manor Farm, Low Toynton, Horncastle.
Miss Alexandra Veva Spilman, Wrawby, Brigg.
Mrs. Edna Margaret Staples, 111, High Holme Road, Louth.
Mrs. Jane Strachan, Ahern House, Fieldside, Crowle.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

STONE'S JUSTICES' MANUAL
LICENSING ACT, 1949, PART II

In connexion with the coming into force of Part II of the Licensing Act, 1949, I would like to correct footnote (*c*) as it appears on p. 1251 of the current edition of *Stone's Justices' Manual*. In seeking to make plain s. 12 (4) of the Act, the footnote says: "Note that not more than one-third of the members of the licensing committee may be members of the confirming and compensation committee but no similar restriction limits the proportion of members of the confirming and compensation committee on the licensing committee."

In this note, by some aberration, the names of the two committees have become transposed. The footnote should read: "Note that not more than one-third of the members of the confirming and compensation committee may be members of the licensing committee, but no similar restriction limits the proportion of members of the licensing committee on the confirming and compensation committee."

I have also been asked to advise whether the power to appoint the committee which the Act requires to be appointed in October, November or December may be exercised this year in anticipation of Part II of the Act coming into force on January 1, 1952. These executory powers, necessary for the purpose of bringing Part II of the Act into operation on January 1, 1952, will be exercised in the last quarter of this year by virtue of s. 37 of the Interpretation Act, 1889.

Yours faithfully,
J. WHITESIDE.

The Court House,
Exeter.

Ready August 14

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By

A. S. WISDOM, *Solicitor*

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PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Building—*Civil building licence—Work done by instalments—Free allowance.*

In September, 1950, a builder applied to my council for a building licence under regulation 56A, to convert into four flats a house owned by him, and the licence was refused in December, 1950. Between these two dates he carried out the initial stages of the proposed conversion at a cost in the region of £100, but suspended work after a warning that he was contravening the regulation. There is little doubt that the work done forms part of the whole scheme originally proposed which could not be completed at a cost of less than several hundred pounds. The builder claims that he has merely taken up his "free allowance" of £100 in accordance with para. 3 of the Control of Buildings Operations (No. 15) Order, 1950 (S.I. 1950, No. 968). Between November, 1950, and February, 1951, without applying for a licence, the same builder carried out the improvement and maintenance of other premises. He gives the cost of the work carried out in this period as £190, but states that he bought materials representing the greater part of the expenditure in the previous licensing year, but was prevented from using them in that year. In this case also, the builder claims that he has in effect proceeded in stages and thus kept within the limits of the order.

In *Dennis and Co., Ltd.* v. *Munn* [1949] 1 All E.R. 616, the court said:

"The general licence (free allowance) is only available in respect of severable work ordered separately and executed separately. Where there is one indivisible work in hand covering more than the free allowance then a specific written licence must be obtained." The court also quoted with approval Scott, L.J., in *Jackson Stansfield & Sons* v. *Butterworth* [1948] 2 All E.R. 558: "I read regulation 56A and the Control of Buildings Operations Order together as meaning that, when the figure for works proposed exceeds the limit allowed by the Order, the whole has to be licensed. The Order, therefore, has no relevance."

I know of no criminal authority on this problem, but in view of the above observations I consider that an offence has been committed in both cases, and should be glad to know if you agree. ASAN.

Answer.

We agree.

2.—Highway—*Public footpath over pasture—Paving.*

A public footpath crossing a pasture field is now being used by many more people owing to the opening of a new housing estate nearby. The question has now arisen as to whether the rural district council as the delegated authority of the county council can pave or tarmacadam the footpath without first obtaining the consent of the owner of the land over which the footpath runs. A. TYPE.

Answer.

This depends upon the terms of the dedication to public use, which may have to be inferred from circumstances and history, since there is seldom any express statement on such a point. An ordinary field path is, however, normally dedicated merely for treading down by pedestrians, which allows some grasss to grow. In principle, therefore, the landowner's consent should be obtained, since paving the footway diminishes the grazing surface, and is thus not what he agreed originally: *Radcliffe* v. *Marsden U.D.C.* (1908) 72 J.P. 475.

3.—Highway—*Traffic lights—Lights obscured by shop blind.*

My council would be glad if you would kindly favour them with an opinion on the following matter:

Recently the council, with the approval of the Minister of Transport, installed traffic light signals at cross-roads in their district. It has since been discovered that when a certain shop sun blind (the existence of which had not previously been appreciated) is lowered over the pavement, an approaching motorist's view of the near-side signal is obscured. This sun blind was in its present position before the installation of the signals and, although it is not eight feet in height, at least in every part, from the ground (*see* s. 28 of the Town Police Clauses Act, 1847) I do not think its interference with the view of the signals can be said to constitute "an obstruction, annoyance, or danger" within the meaning of that section and, in any case, if it were raised to a height of eight feet from the ground the signal would be even more obscured.

The council's surveyor now seeks to compel the owner of the blind to remove it, or to alter it, so that it can no longer obscure the signal, but I have not been able to find any clear-cut statutory provision under which the council can act. I have carefully considered the following enactments:

1. The Highway Act, 1835, s. 72.
2. The Towns Improvement Clauses Act, 1847, ss. 69-70.
3. The Town Police Clauses Act, 1847, s. 28.
4. The Road Traffic Act, 1930, s. 56,

none of which seems to me to meet the case.

Will you kindly advise whether, in your opinion:

(1) the council have any statutory power to compel the owner or occupier of the shop—

(*a*) to remove the sun blind entirely at his own expense;

(*b*) to alter it at his own expense;

(*c*) to remove the sun blind at the council's expense;

(*d*) to alter it at the council's expense;

(2) the council have power themselves to remove or alter the blind;

(3) if such powers exist, the council could exercise them in a similar case where the blind was erected after the signal had been placed in position. AUR.

Answer.

We agree that none of the four enactments mentioned meets the case, and we think the group of questions numbered (1) must be answered in the negative. We do not know of any statutory power possessed by the council to pay for removal of the sun blind, whenever erected, but if the council came to terms with the owner we do not suppose there would be difficulty in obtaining sanction under the proviso to s. 228 (1) of the Local Government Act, 1933.

4.—Land Drainage—*Owner's rate—Ownership within meaning of Land Drainage Act*, 1930.

A question has arisen under the Land Drainage Act, 1930, upon which I can find no authority and I shall be much obliged by your opinion. My clients own a property which was let for ninety-nine years of which some thirty years are still to run. The lessee many years ago sublet the property at a rent four or five times as large as the rent which they themselves were paying. The property is to be assessed for rates under the Land Drainage Act, 1930, and quite a heavy owner's drainage rate will probably be levied under s. 24 (2) of that Act. I can find no definition of the word "owner" and so far as I can see the freeholder will have to bear the whole owner's rate on the property. Is this correct, or can the lessee be required to bear a portion of this? AVO.

Answer.

By s. 30 of the Agriculture (Miscellaneous War Provisions) Act, 1940, the word "owner" is defined for the purposes of that Act as in the Public Health Act, 1936. Part III of the Act of 1940 and the Land Drainage Act, 1930, are by s. 22 to be construed together. The "owner" in the Act of 1930 is therefore the person receiving the rack rent. *See* also para. 8 in sch. 3 to the Agriculture (Miscellaneous Provisions) Act, 1941, for certain cases of liability by owners.

5.—Landlord and tenant—*Council houses—Power to distrain.*

A local authority, owning houses in respect of which a housing revenue account is kept used, before the 1939 war, to instruct a bailiff to distrain against rent defaulters. The practice of course ceased on the introduction of the Courts (Emergency Powers) Act, 1939. Trouble is now being experienced with a small proportion of tenants who will not pay their rents regularly. Much time and effort is wasted in writing letters and occasionally executing court proceedings to keep this minority of tenants up to date with their rent. Usually there are a number of very good reasons (*e.g.*, large families) to make the council reluctant to recover possession. Your advice will be valued on whether, since the Emergency Powers provisions ceased to be in force, the council can lawfully make use of the services of a bailiff to collect arrears of rent without any previous application to, or order of, the court. ANOR.

Answer.

Yes: the bailiff will, of course, be a properly certificated bailiff and provided with proper authority.

6.—Larceny—*Fish—Taking goldfish from ornamental pool—Larceny Act*, 1861, *s.* 24.

I write to seek your views regarding the indictable misdemeanour created by the first part of s. 24 of the Larceny Act, 1861, of taking fish from water which shall run through or be in any land adjoining or belonging to a dwelling-house.

I have received a report of the theft of two goldfish from an ornamental pool in the garden of a dwelling-house, the garden immediately adjoining the house and the owner of the house being the owner of the pool and the fish.

The only point at issue is whether the first part of the section which I have quoted, applies to goldfish in an ornamental pool. My view is that it does, as all the necessary ingredients of the misdemeanour are there, *viz.*, the water is on land " adjoining " a dwelling-house, and goldfish cannot be other than " fish." The fish were not taken by " angling " but were merely scooped out of their abode. Some of my colleagues consider my view is wrong, arguing that the section was never intended to apply to such a case, to which my answer has been that the facts disclosed fit the section exactly, whether intended to do so or not. There is the further point that in these days goldfish are probably more valuable than the species of fish for which the section was framed, *e.g.*, tench, carp, roach, trout and the like. SHOL.

Answer.

The section may not have been intended to meet this particular type of case, but we agree with our correspondent that there is an offence against the section.

If the section did not cover this case, a charge of simple larceny could be preferred as the goldfish have been reduced into possession and have value.

7.—Local Government Act, 1948—*Local valuation courts—Constitution.*

Section 44 (3) of the Local Government Act, 1948, provides that a local valuation court shall consist of :

(*a*) either the chairman of the local valuation panel or the deputy chairman (or, if more than one, one of the deputy chairmen) thereof ; and

(*b*) two other members of the panel selected in accordance with the scheme under which the panel is constituted.

The scheme for the valuation panel in this county is based upon the form recommended by the Minister of Health in circular 68/48, dated May 10, 1948, and provides that " the selection of the two members of a panel (other than the chairman or a deputy chairman) required for the constitution of a local valuation court shall be made by rotation by reference to seniority of age from the members of the panel." The question arises whether, when the chairman of the panel sits at a local valuation court, the deputy chairman may properly sit as one of the other two members of the court, that is to say, should the deputy chairman's name be included in the rota from which the two other members are selected by reference to age. So far as the statute is concerned, the doubt arises because of the use in paragraph (*b*) of the word " other," which may be read to infer that the two members of the panel are to be members other than the chairman and deputy chairman (they having been referred to specifically in paragraph (*a*)), although there is no doubt that both the chairman and deputy chairman are, in fact, members of the panel (*see* s. 46 (1) (*b*)). In drafting his model scheme the Minister seems to have taken the view that neither the chairman nor a deputy chairman, if not sitting in the court under paragraph (*a*), can sit under paragraph (*b*), because he has specially excluded both the chairman and deputy chairman from consideration in selecting the two members. I shall be glad to have your view whether, on the true construction of s. 44 (3), a scheme must provide for the exclusion of both chairman and deputy chairman from selection under para. (*b*) of subs. (3). AYO.

Answer.

On the language of the Act, and indeed upon the reason of the matter, we think the deputy chairmen are outside para. (*b*).

8.—Magistrates—*Practice and procedure—Domestic courts—Allowing parties in other cases to be present to become accustomed to the procedure.*

Under s. 2 (2) (*e*) of the Summary Procedure (Domestic Proceedings) Act, 1937, " any other person whom the court may permit to be present " is excepted from the general prohibition on the presence of the public during the hearing of domestic cases. In order to assist parties in such proceedings to overcome their nervousness and to become acquainted with the procedure of the court, I shall be glad of your valued opinion as to whether it would be permissible for the court to permit parties in cases to be heard later on the list, to remain in court during the hearing of the earlier domestic cases. JCJB.

Answer.

We appreciate the reason given for this suggested practice ; but we think that to give such permission to the parties in other cases would be entirely contrary to the spirit of the Act.

We consider that it is intended by s. 2 of the 1937 Act to ensure that the hearing shall be a private one in which the parties can speak freely and without undue embarrassment, and that s. 2 (2) (*e*) is meant to allow, exceptionally, the admission of other persons (*e.g.*, students, social workers, etc.), but not to authorize a general practice of permitting the parties in other cases to be present.

9.—Magistrates—*Practice and procedure—Members of public rising when the justices enter or leave the court—Press representative refusing to conform to this custom.*

I am having some little trouble with the press in my court. One or two members are reluctant to rise when the justices enter the court or leave. I have pointed out to them unofficially that it is customary for all those in court to rise when a judge or justice enters or leaves the court, and I have told them that the reason for doing this is a matter of good manners and is founded on the fact that the justices are His Majesty's justices.

The particular member of the press that I have in mind has retorted with the argument that he is as good as the King !

I should therefore be very grateful if you would kindly tell me whether there is any authority for this custom and if so what sanction my justices can impose if the trouble continues.

I propose to take the matter up unofficially to start with, but it may be necessary to deal with the matter publicly if it continues.

Any help that you can give me on this rather difficult point will be appreciated.

Can the justices exclude a member of the press if he fails to conform with the usual practice of the court ? JON.

Answer.

We know of no authority on this point, but it is an immemorial custom in all courts for everyone present to rise when the judge or magistrate enters or leaves the court.

The press representatives are present as members of the public and have (except in juvenile and domestic courts) no rights not possessed by the public generally. It may be argued that the magistrates would be entitled publicly to announce that the custom does exist and that it is one to be observed, and that any person who deliberately and persistently refuses to conform to it is guilty of unseemly conduct in court and will be excluded from it.

It must be recognized, however, that to accept this view involves being prepared to use such force as may be necessary either to turn the " offender " out or to exclude him from the court. Would he then have a cause of action for assault ? In the absence of authority we hesitate to advise that no such action would lie, or to predict what the decision of the High Court would be.

If the persons concerned chose to stay out of court until the justices

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have taken their seats and to leave just before the justices rise we do not think any objection could be taken, but it is doubtful whether the "offenders" could always anticipate any retirement by the justices to consider a case, and the matter would probably be bound to come to a head.

10.—Public Health Act, 1936—*Access—Whether confined to access as of right.*

On a leasehold estate two semi-detached dwelling-houses facing one street A are backed by some terrace houses on the same estate and facing another street B. Between these two sets of properties is a passage which has an outlet to street B. This passage is in a bad state of repair and the local authority has given notice requiring the owners of the houses having access to the passage to execute all such works as may be necessary to remedy the defect (Public Health Act, 1936, s. 56). When the authority inspected the passage they found that in addition to the lessees of the terrace houses, the lessees of the semi-detached dwelling-houses had gates leading into the passage. They therefore gave them notice requiring contribution to the cost of repairs. The lessees of the semi-detached dwelling-houses then consulted their solicitors, who on looking into the lease found that there was no right to use the passage reserved to the lessees, and advised them that, although since the commencement of the lease (which was for ninety-nine years) in September, 1928, there had been continuous though very infrequent use of the passage, no rights could be acquired against their fellow lessees, or against the lessor, that they were in fact trespassers, and that the gates should be fastened up and no further use be made by the lessees of the passage. There could be no question of a right of necessity as, not being terrace houses, there was ample access from both the front and back of the properties to street A. The gates were therefore fastened up, but of course after the notices had been served by the local authority. The lessees of the two semi-detached dwelling-houses then appealed to the justices against the order under s. 290 of the Act on ground 3 (*a*) of that section. The local authority argued that "access" meant actual access at the time of the service of the notices. The solicitors for the lessees of the two semi-detached dwelling-houses maintained that such access was illegal—that as soon as this was known to the lessees they remedied the matter by blocking up any entrance to the passage and that "access" could only mean access to which they had a legal right.

May I please have your views? AMBER.

Answer.

We find no authority for limiting the phrase "passage giving access" as if it read "passage which may lawfully be used": we should have thought it was aimed at access in fact. Otherwise the council may get into awkward questions of title, which are not relevant to the object of the section, and can be illustrated on the facts before us. Suppose the lessees had been freeholders: in course of years their use of the gates, which was *nec vi nec clam nec precario*, would have become use as of right. At what stage would it have turned into a "passage giving access"? Or suppose it had been put in order under s. 56 at the expense of other people, and then the period of prescription had run out? We are told this is one leasehold estate: there was, it is true, a technical trespass, if the lessees had not permission from the owners of the soil to open these gates, but the latter could give permission at any time. We conclude, therefore, that the solicitors' argument fails.

11.—River Boards—*Absence from meetings—Vacation of office.*

Your learned opinion on the case which the writer put forward at 115 J.P.N. 160 sheds much light on the subject, but at the same time gives rise to further questions, namely:

(*a*) Paragraph 7 (*c*) of sch. 2 to the River Boards Act, 1948, refers to absence from meetings for "more than six months consecutively." Section 63 (1) of the Local Government Act, 1933, refers to absence "throughout a period of six consecutive months." Is it considered that any significance is to be attached to this difference in wording?

(*b*) Assuming absence from meetings for six months, does the fact that absence from one meeting was due to illness mean that no question of the member's vacating office arises? In other words, does time begin to run from the date of the first meeting which the member fails to attend for a cause other than illness?

(*c*) Is it sufficient for the purposes of the paragraph if the river board are able to approve of the reasons for a member's absence from some only of the board meetings held during the six months?

(*d*) Is it open to a river board to consider the reasons for a member's absence from meetings before the expiration of the six months?

If the answer to (*c*) is in the affirmative, then the answer to (*d*) will presumably be similar. If, however, the answer to (*c*) is in the negative, it is difficult to see how the board can validly approve reasons for absence until after the conclusion of the last board meeting in the six months' period. In practice, this means waiting for the full period to expire, because, whatever the dates of ordinary board meetings, it can never be known whether a special meeting may not have to be convened. A LAZARUS.

Answer.

(*a*) A man who has been absent "throughout six months" has on the first day of the seventh month been absent for "more than six months," and, on the usual rule that the law does not take account of part of a day, there is no difference.

(*b*) Attendance at a single meeting breaks the sequence of absences, and so, we think, must illness—provided, of course, that the member could physically speaking have attended but for the illness.

(*c*) In our opinion, yes.

(*d*) Under the Local Government Acts there had been contrary opinions on this point: *see* 104 J.P.N. 97. At 107 J.P. 539 we came down in favour of the affirmative opinion. On considering the question *de novo*, with special reference to the Act of 1948, we find the affirmative opinion confirmed by the reason of the thing. In addition to the sound reason you mentioned there is the reason that the appointing authorities are entitled to know where they stand. In face of the Law Officers' opinion on the Act of 1894 (*see* 107 J.P.N. 539) we do not suggest that approval cannot be given by the river board after expiry of the six months. But we should certainly advise a member, who realizes that for a reason other than illness (*e.g.*, he is with a Government mission in America) he will be unable to attend the last meeting in the six months, and wishes to retain his seat, to ask the board to approve at that meeting. Indeed, if he is able to foresee his movements, he will do well to apply for "leave of absence" as early as he can.

12.—Road Traffic Acts—1930 *Act*, s. 40 (1)—*Is failure to give name and address of itself an offence?*

I should be obliged if you would kindly favour me with your opinion with regard to the following:

One of my policewomen heard the sound of a collision and on making inquiries saw a motor-car being driven away from the direction of a stationary motor-car which was slightly damaged. She stopped the car and asked the driver, A, whether he had collided with the stationary vehicle, when he said that he had not. He drove away whilst the police officer was looking for the other driver, but she saw him later the same day, and told him that if his vehicle had damaged the other one and he had not given his name and address to the other driver, it would be necessary for him to report the accident to the police. He said that he had contacted the other driver, who said it was all right. The policewoman asked him for his name and address, when he said, "I don't think that's necessary," and drove away.

The policewoman ascertained the registered owners of both vehicles, and interviewed the owner-driver of the stationary vehicle, B, and later A, who was also owner-driver. She told him that B said he had not been contacted, and had no prior knowledge of the slight damage done to his car, and A then admitted that he had not in fact contacted him. At her request he then gave his name and address and produced his insurance certificate.

In view of the attitude he had adopted with the policewoman, proceedings were taken against him for failing to give his name and address when required by a police officer, contrary to s. 40 (1) of the Road Traffic Act, 1930. It was not considered advisable to proceed under s. 22 (1) as it could not be proved that his vehicle had been involved in an accident, and he denied it.

When the case came before the magistrates' court he pleaded Not Guilty, and after the evidence had been given for the prosecution his solicitor submitted that before the offence could be committed a person must fail to give his name and address and the name and address of the owner of the vehicle and produce his certificate of insurance, and that failure to comply with any one of the three requirements did not constitute an offence. He further contended that by the title to s. 40, "Requirements as to production of certificate of insurance or security," it was clear that it related to the production of a certificate of insurance and not to the giving of the name and address, and that the proceedings should have been brought under s. 22 (1).

The case was adjourned for the clerk to go into the matter.

It was pointed out to the court, by the prosecution, that the current edition of *Oke*, p. 890, shows the three requirements as alternatives, and that *Mahaffy and Dodson* show s. 40 (1) in their index under "Giving name and address." Practical Point No. 11, 113 J.P.N. 685, was also referred to. JEB.

Answer.

We agree that the section is concerned primarily with the requirement to produce the certificate of insurance. We think, however, there can be no doubt, as three things must be done to comply fully with the section, that failure to do any one of them constitutes an offence, and that in failing to give his name and address to the constable A committed an offence.

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Applications, stating age, experience, and educational qualifications, and giving the names of three persons to whom reference may be made, should reach me not later than Saturday, August 11, 1951.

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Town Hall, Rochdale.

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P. A. SELBORNE STRINGER,
Clerk of the Peace and of the County Council.

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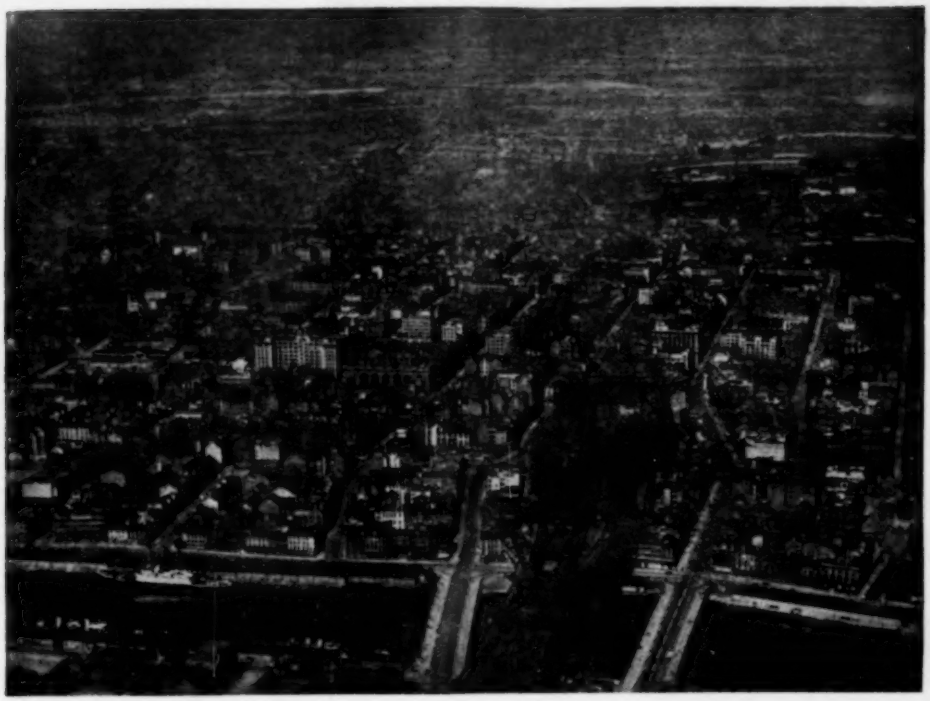

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